88-316

Supreme Court, U.S.
FILED
JUL 18 1988
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LODELL PARKS, SENIOR,
Petitioner,

vs.

ARMENTRIS PARKS,
Respondent.

On Petition for a Writ of Certiorari to the
Missouri Court of Appeals, Eastern District

PETITION FOR A WRIT OF CERTIORARI

MARGARET BUSH WILSON
(Counsel of Record)

WILSON & SMITH
4054 Lindell Boulevard
St. Louis, MO 63108
(314) 534-4400

Attorney for Petitioner

LENA A. CONLEY
DARRYL A. PIGGEE
Of Counsel

St. Louis Law Printing Co., Inc., 13305 Manchester Road 63131 314-231-4477

QUESTIONS PRESENTED

1. Whether Petitioner's rights as a good faith bidder in a judicial sale were denied under the Due Process Clause of the Fourteenth Amendment, when in its discretion the trial court, which approved procedures for a valid judicial sale with which Petitioner complied, granted the real property to a non-complying party without notice while retaining and disbursing the purchase money of Petitioner.

2. Whether a trial court which denies confirmation of a valid judicial sale and, without notice, inpounds the purchase money under the broad discretionary powers of the court, violates the Due Process Clause of the Fourteenth Amendment.

3. Whether Petitioner's rights under the Due Process Clause of the Fourteenth Amendment were denied because of the undue influence of Respondent's present counsel.

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to Proceedings	i
Table of Authorities	vi
Opinions Below	1
Jurisdiction	2
Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Which the Case Involves	2
Statement of Case	2
Federal Questions Timely Raised	6
Reasons for Granting Writ	8
I. By refusing to grant title to the only good faith bidder at a judicial sale, the trial court contradicted established law regarding such sales, and violated rights of due process as guaranteed by the Fourteenth Amendment to the United States Constitution	8
II. By refusing to confirm a valid judicial sale and retaining the purchase money of the bidder without notice, the trial court denied petitioner due process rights under the Fourteenth Amendment to the United States Constitution	12
III. Because of the undue influence of Respondent's present counsel, the trial court denied Petitioner due process as guaranteed by the Fourteenth Amendment	12
Conclusion	14

Appendix

A. Court of Appeals Opinion, January 26, 1988 . A-1

B. Court of Appeals Denial of Rehearing, March 8, 1988 ..... A-5

C. Supreme Court of Missouri denial of transfer, April 19, 1988 ..... A-6

D. Trial Court Judgment, November 12, 1986... A-7

E. Petitioner's Motion To Amend, Modify Judgment of November 26, 1986 ..... A-13

F. Trial Court Order Denying Motion To Amend, January 14, 1987 ..... A-24

G. Special Master's First Report, July 31, 1985 .. A-27

H. Special Master's Findings of Fact, April 25, 1986 ..... A-38

I. Special Master's Second Report, April 25, 1986 ..... A-43

J. Sec. 515.020, Mo. Rev. Stats (1978), Reference..... A-62

K. Rule 68, Masters and Receivers, Missouri Supreme Court Rules A-63

L. Trial Court's Order of April 1, 1986 Denying Motion To Stay..... A-68

M. Trial Court's Memorandum of Recusal..... A-70

N. Trial Court's Order Modifying bid procedures A-71

O. Special Master's Letter of Feb. 21, 1986 setting bid procedures..... A-72

P. Special Master's Memorandum of April 3, 1986 depositing Petitioners bid money A-73

Q. Fourteenth Amendment A-74

TABLE OF AUTHORITIES

Page

Cases

Federal:

In re Murchison, et al., 349 U.S. 133, 136 (1955) 12

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) 8

Mesirow v. Duggan, 240 F.2d 751 (Mo. 1957) 12

State:

A.B.C. Liquidators v. Kansas City, 322 S.W.2d 876 (1959) 9

Dileo v. Hunter, 505 S.W.2d 112 (1974) 11

Dougherty v. McKeever et al., 502 S.W.2d 430 (1973) .. 11

Holt v. Joseph f. Dickmann Real Estate Co., 140 S.W. 2d 59 (1940) 11

Koester v. Koester, 543 S.W.2d 51 (1976) 11

Sandrowski v. Sandrowski, 93 S.W.2d 81, 82 (1936).... 11

Statutes:

Fourteenth Amendment, Constitution of the United States 6,8

Article I, Section 10, Constitution of the State of Missouri 6,8

28 U.S.C. §1257(3)..... 2

§515.020, Mo. Rev. Stats. (1978 as amended) 10

Rule 68.01 et seq., Missouri Supreme Court Rules 10

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LODELL PARKS, SENIOR,
Petitioner,

VS.

ARMENTRIS PARKS,
Respondent.

On Petition for a Writ of Certiorari to the
Missouri Court of Appeals, Eastern District

PETITION FOR A WRIT OF CERTIORARI

Petitioner Lodell Parks Senior respectfully prays that a writ of certiorari be issued to review the judgment of the Missouri Court of Appeals, Eastern District, entered in favor of Respondent, Armentris Parks on January 26, 1988.

OPINIONS BELOW

The January 26, 1988 opinion of Missouri Court of Appeals, Eastern District is reproduced in the Appendix hereto at page A-1. The November 12, 1986 judgment and order of the Missouri Circuit Court, Twenty Second Judicial District, St. Louis City ("the trial court") sustaining Respondent's Objection to the Master's Report regarding the sale of the Leduc property, is reproduced in the Appendix hereto at page A-7. The

January 14, 1987 Memorandum and Order of the trial court denying Petitioner's Motion to Amend, Modify or Vacate the Order of November 12, 1986 is reproduced in the Appendix hereto at page A-24. The April 19, 1988 Order of the Supreme Court of Missouri denying Petitioner's Application to transfer the cause from Missouri Court of Appeals, Eastern District is reproduced in the Appendix hereto at page A-6.

JURISDICTION

The Judgment of the Court below was entered on January 14, 1988, Appendix A-1. Said Court denied motion for rehearing on March 8, 1988. Appendix A-5. The Supreme Court of Missouri denied transfer on April 19th, 1988. Appendix A-6. This petition for certiorari was filed August 19, 1988. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS WHICH THE CASE INVOLVES

1. United States Constitution, Fourteenth Amendment. See Appendix A-74.

2. Section 515.020 Mo. Rev. Stat. (1978 as amended). See Appendix A-62.

3. Missouri Supreme Court Rule 68.01 et seq. See Appendix A-63.

STATEMENT OF THE CASE

This case involves the due process rights of a good faith bidder in a judicial sale of real property. The decision of the court below, which affirmed the judgment and order of the trial court, held in effect that the broad discretion of the trial court supercedes the orderly procedure and process by which the conduct of a judicial sale determines title to real estate.

Upon application of Petitioner, the trial court appointed a Special Master to, among other things, conduct the sale of a certain parcel of real property in the City of St. Louis located at 4715-17 Leduc Avenue.

The master filed two reports, one in July of 1985, and the last in April, 1986, and in both reports recommended the sale of the Leduc property to Petitioner. Appendices A-27 and A-43.

Between the filing of the two Master's Reports, Respondent in October, 1985, retained a new and her third attorney, John D. Schneider, Esquire, who is also a member of the Missouri State Senate.

On February 27, 1986, the Honorable Thomas Mummert, who had presided over much of this case, abruptly, and without prior notice to counsel or the parties, on his own Motion, disqualified himself from the case. Appendix A-70.

The Honorable Robert H. Dierker, Jr., then was named Judge in this case and continued as such until the judgment in November, 1986, and post-trial proceedings.

The specific procedure for the judicial sale was established by the Master in her letter of February 21, 1986 Appendix A-72. The Petitioner complied in all respects, through his counsel, by submitting his offer in writing and tendering a check for the amount of that offer, namely, $24,000.00, by the deadline for March 3, 1986, which date had been set by the Master for the Petitioner and Respondent to make offers Appendix A-72. The transmittal letter from counsel to the Master on behalf of Petitioner was dated February 28, 1986, and stated in part:

> "This offer is submitted with the understanding that the check will not be delivered and cashed unless it is the offer accepted by you as Master for the property. If Mr. Parks is not successful in obtaining the property, the check will be returned to our offices."

The Respondent did not comply with the procedure set by the Master, but sought, through a motion to the Court itself, to stay the proceedings concerning the sale of the Leduc real estate and to have the procedure changed. On March 21, 1986, in response to this Motion to Stay, the Court modified the February 21, 1986, letter of the Master on the procedure to be followed by the parties in making offers for the Leduc property (Appendix A-71) by requiring a deposit of one-half of the offered purchase price.

On April 1, 1986, the trial court entered its order denying the Respondent's Motion To Stay Proceedings and directed the Master to deposit the proceeds of any check which was submitted to her on or before April 1, 1986, in the registry of the Court, not later than 5:00 p.m., April 4, 1986, said funds to be deposited in interest bearing accounts. (Appendix A-68).

In this same Order, the Court further ordered that the Special Master shall file her final report on the reference not later than 5:00 p.m. on April 21, 1986. As a part of said final report, "the Special Master shall submit deeds to accomplish the conveyance of the real estate located at 4715-17 Leduc *to the person submitting the highest bid in accordance with the Special Master's letter of February 21, 1986, as modified by order of this Court entered, March 21, 1986.*" (Emphasis ours) (Appendix A-68). It was further ordered that Respondent submit in writing, under seal to the Court not later than 5:00 p.m. on April 4, 1986, her bid for the property 4715-17 Leduc.

On or about April 4, 1986, the Respondent made a purported offer of $32,000.00 to the trial court accompanied by a post-dated check for $16,000.00, dated April 18, 1986. The date on this check was some two weeks beyond the date set by the Court for submission of offers to the Special Master for the Leduc property. Appendix at page A-47.

On or about April 3, 1986, the Master deposited the proceeds of the $24,000.00 check to Petitioner in the registry of the

Court. It is not known what disposition, if any, has been made of the post-dated check submitted directly to the Court by Respondent's counsel. Appendix A-73.

Subsequently, on or about April 25, 1986, the Special Master submitted her Second Report to the trial court and, among other things, recommended:

1) That 4715-17 Leduc be sold to Petitioner for $24,000.00, less the amount of the outstanding indebtedness;

2) That the Court order Respondent to execute the deed transferring title to the Petitioner.

Respondent filed objections to the Master's Second Report. The Court heard arguments of counsel on these objections, but took no direct testimony. On November 12, 1986, this Court entered its Judgment and Order rejecting that part of the Master's Second Report recommending the sale of the Leduc property to Petitioner, and finding, among other things, "that a sale to Petitioner for the sum of $24,000.00 would not be conscionable in light of the appraised value of the property and the unusual method selected by the Master for accomplishing the sale..." The trial court then ordered the sale of the Leduc property to Respondent for $32,000.00 and awarded Petitioner $7,500.00 in attorney's fees. Appendices at pages A-9 and A-11.

Respondent timely filed a Motion to Amend or Modify Judgment and Order of November 12, 1986, which, after hearing, was denied on January 14, 1987. Appendix A-13.

On January 23, 1986, Petitioner then timely filed his Notice of Appeal and Jurisdictional Statement to the Eastern District of the Missouri Court of Appeals.

FEDERAL QUESTIONS TIMELY RAISED BY PETITIONER

A. IN THE TRIAL COURT

Petitioner learned for the first time by the trial Court's order of November 12, 1986, that he had been denied title to the Leduc property and his bid money had been taken *in custodia legis* without notice or hearing.

Petitioner thereupon filed on November 26, 1986, his Motion to Amend or Modify Judgment and Opinion or in the Alternative Vacate the Judgment and Order of the trial court as to the Real Property entered on November 12, 1986. Appendix A-13.

In his Motion to Amend or Modify, Petitioner at pages five and six raised the federal question of deprivation of property without due process as follows:

> "Contrary to the Court's expressed opinion that, 'A sale to respondent at the high price will work no prejudice to petitioner,' grave prejudice and severe hardship is imposed upon petitioner by the court's judgment and order in that Petitioner is thereby deprived of real property without notice or adequate due process, which is in violation of his consitutional rights under Article I, Section 10, of the Constitution of the State of Missouri and the Fourteenth Amendment to the Constitution of the United States."

Petitioner's Motion to Amend, Modify or Vacate was denied by the trial court on January 14, 1986, Appendix A-38.

B. IN THE MISSOURI COURT OF APPEALS

At the appellate level, before the Missouri Court of Appeals, Eastern District, Petitioner again raised the federal question in his Point I(e), as follows:

> "(e) The trial court effectively deprived Petitioner of substantive due process of law, and thus violated his con-

stitutional rights under state and federal law by refusing to grant him title to the Leduc property while retaining in the registry of the Court the $24,000.00 paid by Petitioner for said property at the judicial sale."

The Missouri Court of Appeals, Eastern District, on January 26, 1988, affirmed the judgment of the trial court and contrary to law, the evidence and facts, held that the trial court's findings were within its discretion and were supported by substantial evidence.

This is a case of first impression in Missouri.

The case involves a question of serious moment regarding the tension between the need to protect the integrity of judicial sales and the broad discretion granted judges in the disposition of assets upon dissolution of marriage.

The decisions in the case at bar violate established principles of federal law regarding due process as recognized by this court.

REASONS FOR GRANTING THE WRIT

I. By Refusing To Grant Title To The Only Good Faith Bidder At A Judicial Sale, The Trial Court Contradicted Established Law Regarding Such Sales, And Violated Rights Of Due Process As Guaranteed By The Fourteenth Amendment.

This Court has long recognized that when a person is deprived of life, liberty or property, there must be some process granted him in order to ensure that the action taken complies with the due process clauses. In *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976), this court established three factors in making the determination of adequacy of due process.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requisites would entail.

The facts of the instant case clearly fall within these factors and reveal the reasons why Petitioner's due process rights have been denied.

a. Private Interest Affected

Grave prejudice and severe hardship is imposed upon petitioner by the Trial Court's judgment and order in that petitioner is thereby deprived of real property without notice or adequate due process, which is in violation of his constitutional rights under Article I, Section 10, of the Constitution of the State of Missouri and the Fourteenth Amendment to the Constitution of the United States; and petitioner is further deprived of a place of his own in which to live, as well as being deprived of the funds with which to secure housing and provide him a source of income Appendix at page A-17, and further that the integrity of

the judicial process is impugned in that petitioner, in good faith, and relying upon the Master's directions and the Court's order, submitted his offer to purchase through his attorney by letter dated February 28, 1986 with the following provision:

> "This offer is submitted with the understanding that the check will not be delivered and cashed unless it is the offer accepted by you as Master for the property. If Mr. Parks is not successful in obtaining the property, the check will be returned to our offices",

The funds so deposited for petitioner were held in the registry of the Clerk's office from February, 1986, and on application of Respondent's present counsel, these funds have now been disbursed by order of the trial court.

The petitioner has very limited means of support, is in poor health, suffering from glaucoma, and advanced in age, so that he is physically unable to seek regular employment, and the Court's order therefore will deprive the petitioner of rental income needed to provide for his support and, in effect, is placing this petitioner in the posture where he may become a ward of the state. Appendix at page A-18.

b. Erroneous Deprivation-Procedural

This was a judicial sale at law; the method selected by the Master to accomplish the judicial sale of the Leduc property was approved by the trial court.

A "judicial sale" is one made under the process of a Court having competent authority to order it by an officer duly appointed and commissioned to sell as distinguished from a sale by an owner in virtue of his right of property. *ABC Liquidators v. Kansas City,* 322 S.W.2d 876 (1959).

The facts of this proceeding reveal that a judicial sale was involved. The sale of the Leduc property was made under the process of the trial court, the St. Louis City Circuit Court which

was a competent authority by virtue of having jurisdiction of the parties and the subject matter under its Decree Of Dissolution Of Marriage entered on December 31, 1980 directing, among other things, the sale of the Leduc property.

By proper order, the trial court duly appointed a Master after a hearing before the trial court on Petitioner's Application For An Order To Show Cause in which he prayed for an accounting of the rents and a sale of the property under the supervision of the Court.

The Master posted bond and fully complied with the statutes and rules for performance of the commission. Rule 68.01 et seq.; Sec. 515.020, Mo. Rev. Stat. (1978 as amended)

It should be noted that the reference designating the Master's appointment did not spell out the parameters of that reference. From the Master's First Report Appendix at page A-27, it was the understanding that Petitioner would be given an opportunity to bid on the Leduc property.

Because both parties expressed interest in purchasing the Leduc property, the Master, after obtaining appraisals, and advertising for offers Appendix at page A-46, set a date and a time for each of the parties to make a bid, and required a full cash payment with the offer Appendix at page A-47. The trial court approved the bid procedure set by the Master after modifying the bid process to permit posting cash of one-half of the offer Appendix A-71.

Petitioner timely complied with the bid process set by the Master before it was modified and tendered a check for the full amount of his offer, namely, $24,000.00. The Respondent did not comply. Her later purported offer of $32,000.00 was accompanied by a post-dated check for $16,000.00.

No cases have been found holding that post-dated checks are acceptable at judicial sales. A person may bid at a judicial sale by agent *Koester v. Koester,* 543 S.W.2d 51 (1976), but the ef-

fect of tendering a post-dated check is and would be to delay or postpone the date of sale so that the bidder, not the Master, controls the terms of the sale. This undermines the integrity of the judicial sale, is against public policy, and flies in the face of a settled principle in Missouri that, "The Courts should be and always have been particularly jealous of the integrity of judicial sales" *Holt v. Joseph F. Dickmann Real Estate Company,* 140 S.W.2d 59 (1940). Moreover, the purchaser at a judicial sale is entitled to rents and profits of the land from the date of sale *Koester v. Koester,* 543 S.W.2d 51 (1976). If bidders were permitted to present post-dated checks at judicial sales, the confusion that could result in trying to determine date of sale is obvious.

After approving the procedure for this judicial sale the trial court in its Judgment And Order of November 12, 1986 referred to "the unusual method selected by the Master for accomplishing the sale" Appendix at page A-8. The usual method of conducting judicial sales of real property is to set a date for offers to be made and to require a payment in cash or negotiable check at the time of the offer. See *Sandrowski v. Sandrowski,* 93 S.W.2d 81, 82 (1936); *Dileo v. Hunter,* 505 S.W.2d 112 (1974); *Dougherty v. McKeever et al.,* 502 S.W.2d 430 (1973). This was the method selected by the Master.

The fact that the bidding was not opened to the public was known by the trial court at the time the procedure adopted by the Master was approved. It is apparent the trial court understood this was done to permit both parties to have a fair opportunity to acquire the Leduc property Appendix at page A-9. This resulted from the nature of the reference itself, since the main purpose of Petitioner in seeking a judicial sale was to acquire 4715-17 Leduc for his home. The application which led to the reference is clear not vague on this point Appendix at page A-27.

II. By Refusing To Confirm A Valid Judicial Sale And Retaining The Purchase Money Of The Bidder Without Notice, The Court Denied Petitioner Due Process Rights Under The Fourteenth Amendment.

The trial court approved a defined procedure to accomplish this judicial sale, then in its discretion, completely ignored the validity of the process it created. Petitioner had no reason to expect anything but title to the Leduc property, given the rules set up by the Special Master and approved by the trial court. The Master spent two and a half years or more to accomplish the sale. The Petitioner delivered the entire bid amount to the Master with the understanding that his money would be returned if he was not granted title. Appendix at page A-17. The trial court heard no testimony and rejected the Master's recommendation to sell the property to Petitioner. In Missouri, the law is settled that if a bidder at a judicial sale is unsuccessful in obtaining title, he is entitled to have his money back. *Mesirow v. Duggan,* 240 F.2d 751 (Mo. 1957). Said the Court in the *Mesirow* case, "One who sells at a void judicial sale may not in conscience be permitted to keep both real estate and purchase money."

The effect of the trial courts' decision here is to deprive this petitioner of both the real estate and his purchase money. The rule of law, the integrity of judicial sales, fundamental fairness and due process demand that Petitioner be granted title to this parcel of real property.

III. Because Of The Undue Influence Of Respondent's Present Counsel, The Trial Court Denied Petitioner Due Process As Guaranteed By The Fourteenth Amendment.

This Court has long recognized that a fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. *In Re Murchison et al.,* 349 U.S. 133, 136 (1955).

It must be noted that respondent's counsel is a member of the Missouri Senate, an office he held throughout these proceedings. This body has direct oversight and responsibility for judicial compensation in Missouri.

There are a number of factors that suggest the presence of undue influence on the court in this matter:

First is the inexplicable recusal of the former trial judge, The Honorable Thomas Mummert, on February 27, 1986, Appendix M, at a time when this case was set for closure, and a few months after State Senator Schneider became respondent's counsel.

Second, is the clear and unmistakable change of position of the trial court from approving the process of the judicial sale in March of 1986 to a complete rejection of that process in its opinion and judgment of November 12, 1986, Appendices A-7 and A-71.

Third, is the trial court's pattern of making findings in its November 12, 1986 Opinion not supported by the evidence, for example: (1) "Petitioner has totally ignored his obligation to pay maintenance" Appendix at page A-25, when the fact is petitioner has been current in his maintenance payments for all the years since the decree; (2) "The Clerk's record reflects no entry of satisfaction of judgment for attorneys fees", when there is such a record Appendix at page A-8; (3) "Notwithstanding Respondent's inability to comply with the precise conditions of sale, laid down by the Master in 1986, Respondent ultimately demonstrated an ability to pay $32,000.00 for the property". The trial court concedes in its November 12, 1986 Opinion that Respondent did not comply with the conditions of the judicial sale. Appendix at page A-9. Moreover, the purported bid from Respondent was for $32,000.00 with which she submitted a post-dated check for $16,000.00; and (4) "Because of petitioner's superior ability to pay, the Court shall award Respondent attorneys fees in the sum of $7500.00". There is no

substantial evidence in the record of petitioner's superior ability to pay. Appendix at page A-10.

All of these factors taken together indicate a pattern of rulings which suggest that the Petitioner was unable to receive a fair hearing and an unbiased decision from the trial court.

CONCLUSION

For these reasons the petition for *writ of certiorari* should be granted.

Respectfully submitted,

MARGARET BUSH WILSON
Counsel of Record

WILSON & SMITH
4054 Lindell Boulevard
St. Louis, MO 63108
(314) 534-4400

Counsel for Petitioner

APPENDIX A

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

Division Four

Lodell Parks

Petitioner-Appellant,

v.

Armentris Parks,

Respondent-Respondent.

No. 52749

Appeal from the Circuit Court of the City of St. Louis

Hon. Robert H. Dierker, Jr.

OPINION FILED: January 26, 1988

This appeal arises out of an ancillary proceeding for the judicial sale of real estate and an accounting for rents following a decree of dissolution. We affirm the order and judgment of the trial court.

On December 31, 1980 a decree of dissolution was entered dissolving the marriage of petitioner, Lodell Parks, and respondent, Armentris Parks. In part, the decree ordered two rental properties owned by the parties, 4715-17 Leduc Avenue (Leduc property) and 2928-30 Belt Avenue (Belt property), to be sold and the net proceeds divided evenly between the parties. Further, the decree awarded respondent maintenance in the sum of $125 per week. This award of maintenance terminated a prior pendente lite award requiring petitioner to pay respondent $750 per month for maintenance. On appeal, this court affirmed the dissolution decree. Parks v. Parks, 657 S.W.2d 393 (Mo. App. 1983).

A dispute arose between the parties regarding the sale of the rental properties and regarding the accounting of rents petitioner received from those properties. On motion of petitioner, the trial court appointed a special master to make recommendations regarding the sale of the properties and to render an accounting for rents received by petitioner. Although not ordered by the trial court, an additional issue of an accounting for maintenance due respondent was addressed by the master without objection by the parties.

The Belt property was sold for $5,000. The proceeds of that sale in the sum of $4,345.98, after expenses, were deposited with the court. This transaction is not challenged on appeal. The master made various reports containing recommendations on the other matters in dispute. Respondent filed objections to those reports.

The trial court held a hearing and entered an extensive Memorandum, Judgment and Order. Pertinent to this appeal, the trial court rejected the master's finding that respondent had agreed to certain credits and to a waiver of interest on maintenance owed to her by petitioner. The court found a total lack of evidence of such an agreement in the record. Next, the court concluded that the master's recommendation that the Leduc property be sold to petitioner for the sum of $24,000 would be unconscionable in light of the appraised value of the property ($27,000 in 1986) and the unusual method the master selected to accomplish the sale. The court ordered the Leduc property to be transferred to respondent for the sale price of $32,000.

The court overruled respondent's objections to the master's report regarding accounting for rents, except insofar as they related to credits the master allowed where the master found attempted fraud on the part of petitioner. Accordingly, the court reduced the aggregate credits the master allotted petitioner in a sum equal to the amount of credits sought by use of fraudulent

receipts. Finally, the court awarded respondent her attorney's fees in the sum of $7,500.

Preliminarily, we note that the standard for appellate review in this court-tried case is guided by the oft-cited Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976). We further note that Rule 68.01(g)(8) provides that if objections are filed to the report of a master, "or the court proposes action other than adoption of the report, the court, after hearing, may adopt the report or may modify it or may recommit it with instructions." Thus, the master's report is simply advisory in nature and not binding on the trial court.

Petitioner makes four claims of trial court error. In his first point on appeal, petitioner posits five reasons why the trial court erred by sustaining respondent's objection to the master's report recommending the sale of the Leduc property to petitioner.

The dissolution decree provided that the Leduc property be sold and the proceeds divided. The petitioner offered to buy it for $24,000 and the respondent offered $32,000. The trial court ordered the property sold for $32,000. The trial court can hardly criticized for ordering a sale at the higher price. Such an order was of financial benefit to both parties. Since there was no prejudice, we reject petitioner's first point.

Petitioner's remaining three points claim the trial court erred by disallowing certain credits to petitioner; by determining the sum due respondent for maintenance; and by awarding respondent her attorney's fees. The determination of these issues involve the resolution of factual questions and the application of established principles of law. As previously stated, under Rule 68.01(g)(3), the trial court may modify or reject the master's report in whole or in part. Clearly, the resolution of any factual dispute is the prerogative of the trial court.

We have carefully reviewed the record and find the trial court's findings were within its discretion and were supported

by substantial evidence. No error of law appears. An extended opinion on these three points would have no precedential value. They are therefore denied pursuant to Rule 84.16(b).

the judgment of the trial court is affirmed.[1]

/s/ William H. Crandall, Jr., Judge

Simon, P.J., Grimm, J., concur.

---

[1]Respondent's motion to dismiss etc. is overruled. Petitioner's motion for attorney's fees is overruled.

APPENDIX B

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

TO: ATTORNEY OF RECORD PAGE: 1 of 1

FROM: DEIRDRE O. AHR, CLERK DATE: March 8, 1988

RE: MOTIONS FOR REHEARING AND/OR TRANSFER TO SUPREME COURT DENIED

1. 51235 - STATE OF MISSOURI, RESP.
   VS. TAYLOR, JERRY, APP.

2. 51279 - STATE OF MISSOURI, RESP.
   VS. BROWN, JEROME, APP.

3. 51542 - STATE OF MISSOURI, RESP.
   VS. PAYTON, HENRY RICO, APP.

4. 51953 - STATE OF MISSOURI, RESP.
   VS. KING, MORISE, ET AL., APP.

5. 52253 - TURNER, JERRY, SR., RESP.
   VS. GENERAL MOTORS CORP., ET AL., APP.

6. 52388 - ROBERTS, DORMA, PRES. REPRES. OF E. SIMPSON, PLT.
   VS. SHELKER, ALBERTA, APP.

7. 52749 - PARKS, LODELL, APP.
   VS. PARKS, ARMENTRIS, RESP.

8. 52879 - SPARKS, KATHLEEN ELAINE, APP.
   VS. SPARKS, ROGER BRUCE, RESP.

9. 53042 - ANDERSON, BLAKE EDWARD, APP.
   VS. STATE OF MISSOURI, RESP.

10. 53134 - HALL, BOBBY, APP.
    VS. WAGNER DIVISION — MCGRAW-EDISON, RESP.

APPENDIX C

IN THE SUPREME COURT OF MISSOURI

No. 70351 ED 52749

January Session 1988

Lodell Parks,

Appellant,

v. Transfer

Armentris Parks,

Respondent.

Now at this day, on consideration of Appellant's Application to transfer the above entitled cause from the Eastern District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI-SCT.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session thereof, 1988, and on the 19th day of April, 1988, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 19th day of April, 1988.
/s/ Thomas F. Simon, Clerk.

APPENDIX D

MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

(St. Louis city)

FILED: Nov. 12, 1986

In re the Marriage of:

Lodell Parks,

Petitioner,

and

Armentris Parks,

Respondent.

Cause No. 793-1054

Division No. 15

MEMORANDUM, JUDGMENT AND ORDER

This matter is before the Court on Respondent's objections to the reports of the Special Master in this cause. The Special Master was appointed after the filing of an "Application for Order to Show Cause" by petitioner. The appointment did not specify the scope of the reference to the master, but the "Application for order to Show Cause" requested the appointment of a master "to handle the accounting of the rents and directs [sic] Respondent to carry out the property sales." The master's reports reflect that an additional issue of an accounting for temporary maintenance due Respondent was addressed by the master without objection by the parties.

The Court's disposition of this matter is governed by Rule 68.01, Mo.R.¼civ.P. See, e.g., *Mitchell v. Mitchell*, 711 S.W.2d 572 (Mo. App. 1986). At the outset, the Court notes that Petitioner has filed no objection to the master's reports (filed July 31, 1985, and April 23, 1986). Rule 68.01 (g)(2)&(3), Mo.R.Civ.P.

Respondent has filed extensive objections addressed to the master's findings (1) that interest on past due temporay maintenance was waived by Respondent and the amount due to be reduced by certain credits to Petitioner; (2) that marital property known as 4715-17 Leduc in the City of St. Louis be sold for $24,000 to Petitioner; and (3) that Petitioner is entitled to certain credits for labor and funds expended by him with regard to parcels of marital property sold or to be sold under the decree of dissolution, including 4715-17 Leduc.

With regard to past due temporary maintenance, the Court must sustain Respondent's objection concerning the waiver of interest and the credits accorded Petitioner. Neither the master's reports nor the voluminous record reflects that Respondent or her counsel made such an agreement unequivocally or in exchange for valuable consideration. The Clerk's record reflects no entry of satisfaction of judgment for attorney's fees. On August 30, 1985, Respondent filed objections to the master's first report, specifically attacking the allowance of credits to Petitioner and asserting that interest was due and owing. The sum due for temporary maintenance constitutes a judgment and Respondent was and is entitled to interest. See, e.g., *Foster v. Foster*, 703 S.W.2d 952 (Mo.App. 1986); *Grommet v. Grommet*, 714 S.W.2d 747 (Mo.App. 1986); Sec. 454.520, RSMo. 1978 & Supp. Judgment will be entered in favor of Respondent in the sum of $7,027.50 together with interest to date in the sum of $5,245.16, aggregating $12,272.66.

With regard to the sale of 4715-17 Leduc, the Court reluctantly concludes that a sale to Petitioner for the sum of $24,000 would not be conscionable, in light of the appraised value of the property and the unusual method selected by the master for accomplishing the sale. The Court is aware that the master was charged with a difficult task, one made more difficult by Respondent's change of counsel, and the Court reaches its decision with the conviction that the master has endeavored to the best of her ability to carry out the rather vague reference by the

Court. Nevertheless, at the time the master filed her first report, Respondent had made known that she was willing to pay more than the appraised value for the Leduc property. Notwithstanding Respondent's inability to comply with the precise conditions of sale, laid down by the master in 1986, Respondent ultimately demonstrated an ability to pay $32,000 for the property. The most recent appraisal values the property at $27,000. Because a sale to Respondent at the higher price will work no prejudice to Petitioner, the Court will sustain Respondent's objection to the master's report, regarding the sale of the Leduc property. Petitioner shall receive credit for 50% of the net after deduction of the unpaid principal balance of the mortgage loan from $32,000.

Turning to the matter of the accounting for rents from the various parcels of property subject to the decree herein (4605 Elmbank, 4607-09 Elmbank, 2928-30 Belt, and 4715 Leduc), the Court notes that the purpose of special masters is to foster judicial economy by sparing the Court the necessity poring over books of account with its own eye-shade and adding machine. Matters of account are expressly contemplated by Rule 68.01(b), Mo.R.Civ.P., as among the few appropriate candidates for reference in court-tried cases. The Court has permitted Respondent to file extensive written evidence — none of which has been objected to by Petitioner. The record before the master, plus additional evidence submitted by Respondent, permits meaningful review of the reports. Rule 68.01(g)(3) expressly provides:

> " . . . If objections are filed, or the court proposes action other than adoption of the report, the court, after hearing, may adopt the report or may modify it or may reject it in whole or may receive further evidence or may recommit it with instructions."

Given the Court's discretion under Rule 68.01(g)(3), supra, the Court will not replicate the master's accounting where it can be shown to have a solid basis in the record.

In the Court's view, the objections to the master's report and accounting for rents must be overruled, except insofar as they relate to credits allowed by the master where the master herself found attempted fraud by Petitioner. The Court believes that, as a matter of law, Petitioner must be debarred from any credit for work done by him without independent verification of value or actual expenditures. The Court believes that equity demands that Petitioner not profit in any way, directly or indirectly, from his attempted fraud upon the Court. See generally *Hyde Park Amusement Co. v. Mogler*, 214 S.W.2d 541 (Mo.1948). Accordingly, the Court will reduce the aggregate credits allotted Petitioner by the master in a sum equal to the amount of credits sought by use of fraudulent receipts (Items 1, 4, 5, 6, 7, 8, and 10 appearing on Respondent's Exhibit #6 submitted at hearing before the master). This sum is $4360, and will be added to the sum of $17,935.92 found due and owing from Petitioner to Respondent by the master (a figure to which Petitioner did not object). The supplemental accounting requires an addition of $807.80 to this figure. The Court rejects Respondent's objections to the supplemental accounting. Judgment will be entered in favor of Respondent in the sum of $23,103.72. Because this amount was not liquidated previously, interest runs on the sum from the date of judgment.

Because of petitioner's conduct in this matter, his attempted fraud on the Court, as well as his superior ability to pay, the court shall award Respondent attorney's fees in the sum of $7500.00. See *O'Neal v. O'Neal*, 703 S.W.2d 535 (Mo.App. 1985).

The newly discovered joint account #C01-80830374 at New Age Federal Savings & Loan is, by the terms of the dissolution decree, to be divided equally between the parties.

Accordingly, it is ORDERED, ADJUDGED AND DECREED as follows:

1. Respondent have and recover of Petitioner the sum of $12,272.66 as and for unpaid temporary maintenance and interest thereon, together with interest at the legal rate from the date of entry of this judgment, for which let execution issue;

2. The real property located in the City of St. Louis known and numbered as 4715-17 Leduc is hereby sold and conveyed to Respondent and Petitioner is ordered to execute a quitclaim deed to Respondent forthwith in accordance with this decree;

3. Respondent have and recover of petitioner the sum of $23,103.72, together with interest thereon at the legal rate, for which let execution issue, subject to a set-off in favor of Petitioner by reason of the sale of the Leduc property, in the sum of $14,847.28;

4. The balance in account #C01-80830374. New Age Federal Savings & Loan, is to be retained 50% by Respondent, with the remainder remitted to Petitioner, provided that Respondent may retain the sum payable to petitioner upon the filing of a satisfaction of judgment in such amount in favor of Petitioner in this proceeding;

5. Respondent have and recover of petitioner the sum of $7500 as and for reasonable attorney's fees, for which let execution issue;

6. The special master shall submit her final claim for fees and expenses within 10 days of the date hereof; the parties shall file objections, if any, thereto within 10 days after the filing of such claims; Respondent's motion to order all such fees and expenses paid by Petitioner is denied;

7. The funds heretofore deposited in the registry of the Court, together with interest thereon, shall be disbursed by the Clerk as follows:

$2305.44 to Boatman's National Bank of St. Louis to discharge the lien pertaining to 4715-17 Leduc; $20,000 to

Respondent, together with all accrued interest on the total sums deposited to date; $6040.54 reserved as security for payment of the special master's fees and expenses.

SO ORDERED:

/s/ Robert H. Dierker, Jr.

Dated: November 12, 1986

cc: Counsel of Record
Special Master

Copy of the foregoing served
in accordance with Rule 74.78, Mo.R.Civ.P.,
on the ____ day of _____, 19____.
Deputy Clerk

APPENDIX E

STATE OF MISSOURI

CITY OF ST. LOUIS

Filed: November 26, 1986

Freeman R. Bosley, Jr.

Clerk, Circuit Court

By /s/mjm Deputy

Missouri Circuit Court

Twenty-Second Judicial Circuit

(St. Louis City)

Lodell Parks,

Petitioner,

v.

Armentris Parks,

Respondent.

Cause No. 793-1054

Division No. 15

MOTION TO AMEND OR MODIFY JUDGMENT AND OPINION OR, IN THE ALTERNATIVE, TO VACATE THE JUDGMENT AND ORDER AS TO THE REAL PROPERTY AND MOTION FOR EXTENSION OF TIME TO FILE SUGGESTIONS IN SUPPORT THEREOF

COMES now LODELL PARKS, petitioner in the above-entitled cause, and shows that by judgment made in this cause on November 12, 1986, it was ordered, adjudged and decreed as follows:

1. Respondent have and recover of Petitioner the sum of $12,272.66 as and for unpaid tempory maintenance and interest

thereon, together with interest at the legal rate from the date of entry of this judgment, for which let execution issue:

2. The real property located in the City of St. Louis known and numbered as 4715-17 Leduc is hereby sold and conveyed to respondent, and petitioner is ordered to execute a quit-claim deed to respondent forthwith in accordance with this decree;

3. Respondent have and recover of petitioner the sum of $23,103.72, together with interest thereon at the legal rate, for which let execution issue, subject to a set-off in favor of petitioner by reason of the sale of the Leduc property in the sum of $14,847.28;

4. The balance in account #C01-8083074, New Age Federal Savings & Loan, is to be retained 50% by respondent, with the remainder remitted to petitioner, provided that respondent may retain the sum payable to petitioner upon the filing of a satisfaction of judgment in such amount in favor of petitioner in this proceeding;

5. Respondent have and recover of petitioner the sum of $7,500.00 as and for reasonable attorney's fees, for which let execution issue;

6. The special master shall submit her final claim for fees and expenses within 10 days of the date hereof; the parties shall file objections, if any, thereto within 10 days after the filing of such claims; respondent's motion to order all such fees and expenses paid by petitioner is denied;

7. The funds heretofore deposited in the registry of the court, together with interest thereon, shall be disbursed by the Clerk as follows:

$2,305.44 to Boatmen's National Bank of St. Louis to discharge the lien pertaining to 4715-17 Leduc; $20,000.00 to respondent, together with all accrued interest on the total sums deposited to date; $6,040.54 reserved as security for payment of the special master's fees and expenses."

1. That petitioner, in accordance with Civil Rule 73.01(a)(3), moves the Court to amend or modify its judgment and opinion or, in the alternative, to vacate the judgment and order as to the real property at 4715-17 Leduc and in support of this motion states as follows:

(a) Contrary to the Master's Report the law and without substantial basis in fact, the Court has concluded that the conduct of the petitioner is the only relevant factor and the sole criteria in determining the main issue herein, thereby ignoring such criteria as:

- the range within which sales of real property at a court supervised sale are reasonable vis a vis the appraised value;
- the value of the property set aside to each party;
- the financial circumstances of each party at the time of this Court's Judgment and Order;
- the misconduct and misdeeds of respondent;
- the health and physical stamina of the parties;
- the payment history of petitioner since the decree of dissolution on the allowance of maintenance to respondent;
- the socio-economic status of the parties, and
- the severe economic hardship imposed upon petitioner by the Judgment and Order.

(b) Contrary to the Master's Report, and the law and the evidence, the Court has concluded tht the misstatements of the petitioner constitute attempted fraud and serve as a basis for ordering excessive interest or maintenance, excessive attorney's fees, and a punitive allocation of the net rents and the remaining real property of the parties, so that the petitioner, a black man with a high school education, is deprived of all real property

assets accumulated through his efforts of over thirty years and which represented petitioner's primary source of income. Further, petitioner therefore has no means or resources to pay the amounts awarded by this Court or to adequately maintain himself in a decent, safe and sanitary environment. The division of the marital property is now so unduly weighted in favor of the respondent as to amount to an abuse of the Court's discretion. This is substantiated by the evidence, which reveals that petitioner has been allocated marital property having an approximate value of $16,000.00, and respondent has been allocated marital property having an approximate value of $65,000.00, together with temporary maintenance, interest and attorney's fees of approximately $19,000.00 for a total of approximately $84,000.00 in addition to respondent's monthly maintenance from petitioner of $750.00 per month for life.

(c) Contrary to the Master's Report and without basis in law or equity, the Court has abused its discretion and arbitrarily and capriciously concluded that petitioner's bona fide cash offer to purchase the property at 4715-17 Leduc by petitioner for twenty-four thousand dollars ($24,000.00), which was accepted by the Master pursuant to a procedure and process reviewed by and concurred in by this Court on April 1, 1986, is now unconscionable.

(d) Contrary to the Master's Report, and without basis in law or equity, the Court has abused its discretion and capriciously accepted and approved a purported offer of respondent to purchase the property at 4715-17 Leduc for thirty-two thousand dollars ($32,000.00), knowing that the appraised value of said property was only twenty-seven thousand dollars ($27,000.00), and knowing further that respondent did not comply with the procedures and process set by the Master and modified and ordered by this Court on the first day of April, 1986, for the submission of offers to purchase, and further that said respondent perpetrated a deceit upon the court by tendering a post-dated check with her purported offer directly to the Court, the

proceeds of which check, as far as is known, have never been deposited in the registry of the Court.

(e) That the Leduc property is located in the heart of a black enclave in the inner city of St. Louis where proprty values are such that a reasnable and prudent person would not pay thirty-two thousand dollars ($32,000.00) for the Leduc property, and therefore there is no basis for concluding that the offer of respondent was a good faith offer, but rather a contrivance and a sham and the Court's approval thereof is improper and constitutes an abuse of discretion.

(f) Contrary to the Court's expressed opinion that, "A sale to respondent at the higher price will work no prejudice to petitioner", grave prejudice and severe hardship is imposed upon petitioner by the Court's judgment and order in that petitioner is thereby deprived of real property without notice or adequate due process, which is in violation of his constitutional rights under Article I, Section 10, of the Constitution of the State of Missouri and the Fourteenth Amendment to the Constitution of the United States; and petitioner is further deprived of a place of his own in which to live, as well as being deprived of the funds with which to secure housing and provide him a source of income, and further that the integrity of the judicial process is impunged in that petitioner, in good faith, and relying upon the Master's directions and the Court's order, submitted his offer to purchase through his attorney by letter dated February 28, 1986 with the following provisions:

> "This offer is submitted with the understanding that the check will not be delivered and cashed unless it is the offer accepted by you as Master for the property. If Mr. Parks is not successful in obtaining the property, the check will be returned to our offices",

That the funds so deposited for petitioner have been held in the registry of the Clerk's office since last February, 1986, and peti-

tioner was informed and verily believed that his offer had been accepted and the issue of the purchase of the property had been resolved.

(g) That petitioner has very limited means of support, is in poor health, suffering from glaucoma, and advanced in age, so that he is physically unable to seek regular employemnt, and the Court's order therefore will deprive the petitioner of rental income needed to provide for his support and, in effect, is placing this petitioner in the posture where he may become a ward of the state.

2. This Court has erroneously referred to the procedure selected by the Master for the sale of the Leduc property as, "the unusual method selected by the Master for accomplishing the sale". The fact is, and the evidence shows, that this was the usual method of conducting court-supervised sales of real property which the Master adopted—that is, setting a date for offers to be made and requiring a payment to be made at the time of that offer. What is unusual is that this Court has embraced the position of the respondent, who was unwilling (though not unable) to put up any cash for the purchase of the Leduc property but has insisted on being allowed to use credits which presumably she contends are hers by virtue of amounts due her from petitioner. Presumably these matters were only referred to the Master due to their complexity. After having devised a practical method for effectuating the sale of the real property as a result of the expenditure of considerable time and expense, the Court without good cause shown recklessly tinkers at will with the Master's well-reasoned decision. The question must be asked, would the Court have set aside this sale of 4715-17 Leduc for twenty-four thousand dollars ($24,000.00) as unconscionable if it had been made to a third party pursuant to the Master's method.

3. That with respect to the accounting for rents, the court is in error in stating that, "The Court has permitted respondent to

file extensive written evidence—none of which has been objected to by petitioner", since petitioner has filed with the Master specific refutation of items claimed by respondent and this refutation was reaffirmed by counsel for petitioner in an appearance before the Court on October 15, 1986.

4. That with respect to the Court's contention that this petitioner attempted fraud upon the Court, the facts are that this petitioner personally performed work upon the properties which improved those properties, but chose to indicate that someone else had performed it. This is not a situation of falsely alleging that work had been done when it had not. Petitioner mischaracterized, but the Court's reliance upon this is misplaced because this fact situation does not go to the heart of the issues in this cause, nor did anyone rely on this to their detriment. Moreover, it was the Master who heard testimony of the parties and had opportunity to assess their respective credibility and the weight to be given to their testimony and evidence, and this Court has not heard testimony from either of the parties.

5. The Court's allowance of attorney's fees to counsel for respondent is unconscionable and constitutes an abuse of discretion in light of petitioner's ability to pay. The vast majority of pleadings filed by said counsel addressed material that had been reviewed by prior counsel in great detail and at considerable time and expense with the Master. It is a clever ploy, but wholly inaccurate for the respondent's counsel to contend that his efforts led to a second Master's report reflecting a considerable increase in amounts due respondent, when in fact the increase reflected in the second Master's report was primarily due to the income generated by the properties during the time between the filing of the first Master's report in February of 1985 and the second Master's report filed in April of 1986.

6. That the Judgment and Order in this cause was entered on the 12th day of November, 1986, but a copy was not delivered to counsel for petitioner until the 18th day of November, some six days later, by messenger, which does not allow petitioner

sufficient time to prepare Suggestions in Support of his motion and also comply with the rules of Court, which require the filing of his motion within fifteen days of the date of judgment, necessitating an extension of time for petitioner to file Suggestions in Support thereof pursuant to Supreme Court Rule 44.01(b).

7. That although the judgment in this cause is not final, counsel for the respondent has prematurely written to each of the tenants in the property at 4715-17 Leduc, providing them a copy of the Court's order and directing them that "all rents in the future are to be paid to Armentris Parks [Respondent], 4605 Elmbank, St. Louis, Missouri, 63115", which action is disruptive, intrusive, and not in the best interests of the tenants, who should not be drawn into this controversy.

As a result of the above, all of which involves a clear indication that the Court has erred in the judgment and order heretofore entered on the 12th day of November 1986 by not treating the Special Master's Report as a special verdict, the petitioner prays that a new order be entered.

WHEREFORE, petitioner prays the court:

1. To approve the report and recommendation of the Master and issue an order that the property at 4715-17 Leduc be sold to petitioner for $24,000.00;

2. To disallow attorney's fees to respondent in this cause;

3. To issue an order staying the respondent from collecting rents from the tenants at 4715-17 Leduc, or from interfering with the management of the property until further order of this Court;

4. To allow petitioner additional time to file Suggestions in Support of this motion, and for such other and further orders as the Court deems meet and proper.

WILSON, SMITH & SEYMOUR

/s/ Margaret Bush Wilson #13127
Attorneys for Petitioner
4054 Lindell Boulevard
St. Louis, MO 63108
(314) 534-4400

1409brt

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record for all parties to the above cause by depositing same in an envelope addressed to such attorneys at their address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office mail box in St. Louis, Missouri on the 26th day of Sept., 1986
/s/ Margaret Bush Wilson

MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

(St. Louis City)

Lodell Parks

v.

Armentris Parks

No. 793-1054

December 17, 1986

MEMORANDUM FOR CLERK

Comes now petitioner, and amends his after judgment motion heretofore filed on November 26, 1986, by adding through interlineation at the end of Section 1(f) on page 6 of said motion, the following additional paragraph:

That said $24,000.00 referred to in paragraph 1(c) above, was solely for the purchase by petitioner of the Leduc property, and it was gross error and in conflict with case law for this Court in its order of November 12, 1986 to direct that any portion of the said $24,000.00 on deposit in the registry of this court be disbursed for any purpose other than to consumate the sale of the Leduc property to petitioner; and in the event that petitioner's offer of purchase was rejected, as it was by this court, the full amount of the $24,000.00 should have been returned to petitioner forthwith.

Respectfully submitted,
WILSON, SMITH & SEYMOUR
/s/ Margaret Bush Wilson #13127
4054 Lindell Boulevard
St. Louis, MO 63108
(314) 534-4400

Attorneys for Petitioner

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Instrument was served upon the attorneys of record for all parties to the above cause by depositing same in an envelope addressed to such attorneys at their address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office mail box in St. Louis, Missouri, on the 17th day of December, 1986.

/s/ Margaret Bush Wilson

APPENDIX F

MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

(St. Louis City)

In re the Marriage of

Lodell Parks,

Petitioner,

v.

Armentris Parks,

Respondent.

Cause No. 793-1054

Division No. 15

MEMORANDUM AND ORDER

The Court has before it petitioner's motion to amend or set aside its order disposing of objections by respondent to the special master's report. The motion was argued to the Court at great length on December 19, 1986.

Petitioner's principal contention is that the purpose of the reference of this matter to the special master was to accomplish the sale of the Leduc property to petitioner, and the Court abused its discretion in ordering the property sold to respondent, who failed to comply with the master's directions in submitting her bid for the property. The property in question was marital property, ordered sold by the dissolution decree in this case, with the proceeds to be divided equally after payment of indebtedness. The property produces substantial income and was appraised for the master at $27,000. Petitioner demands that the master's report recommending sale to him be approved by the Court.

Albeit the reference in this case came on petitioner's request, which included a request that the master be appointed to accomplish a sale to petitioner, no sale of this type is complete until the Court approves it. Cf. *Williams v. Williams*, 497 S.W.2d 415 (Mo.App. 1973). Respondent was entitled to object to the master's report, and the Court is entitled to rule on those objections in such a way that the decrees of this Court are observed. Petitioner, who has totally ignored his obligation to pay maintenance in the past and who has attempted to manufacture claims for credits before the master, is in a poor position to attack this Court for abusing its discretion in seeking to vindicate the public interest in enforcement of decrees. The Leduc property was marital property. Petitioner has no greater right to purchase it than does respondent. Petitioner certainly has no right to expect that the property be sold to him at a bargain price. The Court's duty is to assure the sale of the property at a fair price, with the equal division of the proceeds, as directed in the dissolution decree. In the Court's view, it is preferable to sell the property to respondent, with petitioner receiving $16,000 for his half-interest, than to sell it to the petitioner, with respondent receiving $12,000 for her interest. The Court deems the Leduc property and the moneys deposited with the Court to be *in custodia legis*; and the Court's duty is to deal with such property in the fairest and most equitable manner.[1] It believes it has done so.

The parties have not attacked the reasonableness of the fee requested by the special master. The Court finds that each party should bear 50% of that fee. The Court also finds that the funds in the registry of this Court set aside in the previous order are derived from payments due petitioner and respondent equally, namely the proceeds of the sale of the Belt property, plus accrued interest, so that the obligation of the parties to the master may be satisfied by the use thereof.

---

[1] The Court also recalls that petitioner was advised that he need deposit only $12,000 to secure his bid on Leduc, but chose to deposit $24,000.

The Court has carefully considered petitioner's remaining arguments and finds them without merit. Accordingly it is

ORDERED that petitioner's motion to amend, modify or vacate the order of November 12, 1986, be and the same is denied; and it is

FURTHER ORDERED that the special master have and recover over against petitioner the sum of $2,668.12 and have and recover over against respondent the sum of $2,668.13, as and for her reasonable fees and expenses, and that the Clerk remit to the Special Master from the funds heretofore paid into the registry of the Court the sum of $5,336,25 in full satisfaction of this judgment herein rendered; and it is

FURTHER ORDERED that the order of November 12, 1986, be amended to provide that, out of the funds on deposit in the registry of the Court in connection with this case, the additional sum of $704.29 be paid by the Clerk to respondent or at her direction.

SO ORDERED:

/s/ Robert H. Dierker, Jr.

Dated: January 14, 1987

cc: Counsel of Record
Special Master

APPENDIX G

IN THE CIRCUIT COURT OF THE CITY OF SAINT LOUIS

State of Missouri

In re the Marriage of

Lodell Parks

and

Armentris Parks

Cause No. 793-1054

Division 15

Filed: July 31, 1985

Freeman R. Bosley, Jr.

Clerk, Circuit Court

By: /s/ Deputy

SPECIAL MASTER'S REPORT

On February 2nd, 1984, the Honorable Jean C. Hamilton ordered that a "Master . . . be appointed to handle accounting of rents and (to) order the sale of 4715-17 Leduc to Petitioner and for such other and further orders." By agreement of the attorneys for the parties, Anne-Marie Clarke was appointed Special Master on April 9th, 1984. Pursuant to Supreme Court Rule 68.01 (d), Special Master subscribed her name to an oath administered by a Notary Public.

ISSUES

The parties, Lodell and Armentris Parks, sought a divorce. Without recounting the numerous legal maneuvers involved, suffice it to say that an order for temporary maintenance was made to Mrs. Parks and against Mr. Parks on July 6th, 1979 for $750.00 per month. The decree of dissolution was granted on December 31st, 1980. Mr. Parks appealed the decree. The decree became final on September 30th, 1983.

The decree ordered, among other things, Mr. Parks to pay Mrs. Parks $125 per month as maintenance beginning January 1st, 1981. Further, the marital home at 4605 Elmbank was to be conveyed to Mrs. Parks. From the time of the separation, Mr. Parks resided in the marital home. 4607-09 Elmbank was also awarded Mrs. Parks and a 1978 Cadillac automobile. She received all marital property in the marital home. Mr. Parks was awarded a 1978 Chevrolet van and sole interest in his business, Parks Burglar Alarm Company. Real estate owned by the parties at 4715-17 Leduc and at 2928-30 Belt was to be sold and the proceeds equally divided.

The issues, thus, presented to the Special Master:

1. Sell 2928-30 Belt.

2. Sell 4715-17 Leduc to Mr. Parks (per the order of Judge Hamilton)

3. Resolve the amount due Mrs. Parks, if any, for temporary maintenance granted by the court on July 6th, 1979.

4. Provide an accounting of rents received for all property.

2928-30 Belt

On December 12, 1983, W.A. Thomas, A.S.A. appraised 2928 Belt at $21,000. The building is a converted two-family flat consisting of a total of four units. The property has apparently stood vacant for some time. The property was advertised for sale. Despite the appraised value, one offer was made to purchase the property; this was for $5,000. The offer was accepted and the property was sold on September 20th, 1984. The proceeds, $4,345.98, have been deposited with the court.

4715-17 Leduc

Unlike the Belt property, the Leduc property generated a great deal of interest from other purchasers. On April 16th, 1984, during a meeting with the attorneys for the parties, it was

agreed that the Leduc property would be advertised for sale in order to determine the price for which Mr. Parks would be able to purchase the property. The contracts received offered $22,000 and $23,000. A contract also offered $41,000 although the agent representing the purchaser failed to meet with the Special Master to secure the sale. Mrs. parks offered $30,000.

On December 12, 1983, this property was appraised by W.A. Thomas, A.S.A. for $23,000. The Special Master, therefore, determines that $23,000 is the price to Mr. Parks. There is, however, a balance due on the mortgage of $3,635.32. As the decree ordered that any indebtedness be paid from the proceeds of the sale, the price to Mr. Parks is $19,364.68.

Temporary maintenance

Mr. Parks was ordered to pay Mrs. Parks $750 as temporary maintenance beginning in July 1979. Mr. Parks did not make these payments. By order dated September 8th, 1980, the Honorable Anna C. Forder ordered that Certificates of Deposit totally $11,445 be released to Mrs. Parks. Mrs. Parks was, however, entitled to one-half of these monies.

Mrs. Parks was due $13,500 under the award for temporary maintenance, covering the date of the order, July 6th, 1979, to the date of the decree, December 31st, 1980 (eighteen months). This amount must be reduced by one-half of the $11,445 released to Mrs. Parks or by $5,722.50. It must be reduced further by $1,846.91 which represents money spent by Mr. Parks on behalf of Mrs. Parks. This amount was calculated during a conference with the attorneys for the parties on February 27th, 1985. The amount due Mrs. Parks under the temporary maintenance agreement is $5,930.59.

Accounting of rents

The Special Master has compiled an extensive listing of the amounts spent and received for the several properties owned by Mr. and Mrs. Parks. The recapitulation contained at the end of the accounting shows the amount due Mrs. Parks is $3,414.87.

Summary

From sale of 4715-17 Leduc, one-half of proceeds, $19,364.68	$9,682.34
Temporary maintenance	$5,930.59
Rent from properties	$3,414.87

Due to Mrs. Armentris Parks from Mr. Lodell Parks $19,027.80

(Not included are the proceeds from the Belt property sale ($4345.98) and $600.20 remaining of money deposited by each party with the Special Master. These amounts will be used to pay the costs of this proceeding. The balance will be divided equally between the parties.)

Respectfully submitted,

/s/ Anne-Marie Clarke
Special Master

Dated July 31st, 1985

IN RE THE MARRIAGE OF
LODELL PARKS AND ARMENTRIS PARKS

ACCOUNTING SUPPLEMENT

Paid by Lodell Parks for the benefit of Armentris Parks $ 1,846.91

12/20/78	$ 66.80	Standard Oil Co.
12/28/78	$ 35.00	Kessler Furrier
12/29/78	$ 400.00	Harry Cutler, M.D.
01/30/79	$ 115.00	Harry Cutler, M.D.
02/08/79	$ 124.82	Standard Oil Co.
02/17/79	$ 20.00	Stix, Baer and Fuller
02/17/79	$ 30.00	Famous-Barr Co.
02/17/79	$ 20.00	J.C. Penney
02/27/79	$ 115.00	Harry Culter, M.D.
03/01/79	$ 30.00	Famous-Barr Co.
03/01/79	$ 30.00	Stix, Baer and Fuller
03/01/79	$ 30.00	J.C. Penney
03/12/79	$ 50.00	Standard Oil Co.
03/18/79	$ 175.77	Stix, Baer and Fuller
03/30/79	$ 30.00	Harry Cutler, M.D.
04/03/79	$ 30.00	Famous-Barr
04/03/79	$ 30.00	J.C. Penney
04/03/79	$ 20.00	Stix, Baer and Fuller
04/14/79	$ 88.86	Standard Oil Co.
05/07/79	$ 40.40	Famous-Barr
05/07/79	$ 30.00	Stix, Baer and Fuller
05/15/79	$ 100.80	Standard Oil Co.
06/07/79	$ 88.96	Standard Oil Co.
08/31/79	$ 50.00	Stix, Baer and Fuller
08/31/79	$ 50.00	Famous-Barr
11/23/79	$ 00.50	Stix, Baer and Fuller
02/14/80	$ 15.00	Famous-Barr
03/02/80	$ 15.00	Famous-Barr
07/31/80	$ 15.00	Famous-Barr

Filed: August 5, 1985
Freeman R. Bosley, Jr.
Clerk, Circuit Court
By: /s/ Deputy

Expenses paid by Lodell Parks for 2928-30 Belt $2,796.25

05/01/81-09/01/81	$ 40.00	Lawn care
01/82	$ 100.00	Plumbing
05/82-09/82	$ 40.00	Lawn care
06/82	$ 54.00	Sewer
06/82	$ 19.00	Pest control
06/18/82	$ 978.35	Burning and painting windows
07/82	$ 50.00	Sewer cable
07/82	$ 20.00	Brick cleaner
09/82	$ 100.00	Roof repair
11/82	$ 190.00	Insurance
12/82	$ 54.00	Sewer
12/82	$ 37.18	Roofing supplies and labor
12/82	$ 675.00	Real estate taxes (includes 4605 Elmbank)
05/83-09/83	$ 60.00	Lawn care and carpentry
09/25/83	$ 45.00	Water bill (paid jointly)
10/01/83	$ 85.00	Tree trimming
10/15/83	$ 150.00	Tuckpointing
02/01/84	$ 62.10	Sewer bill
03/08/84	$ 36.62	Water bill

Rents received for 2928-30 Belt $2,425.00

1981	$1050.00
1982	$ 900.00
1983	$ 475.00

Income for 2928-30 Belt ($ 371.25) loss

Expenses paid by Lodell Parks for 4605 Elmbank $3,999.68

5/81-9/81	$ 120.00	Lawn care
3/82	$ 143.93	Water (all units)
4/01/82	$ 125.00	Plumbing repairs
5/82	$ 45.00	Lawn mower
5/82-9/82	$ 120.00	Lawn care
6/82	$ 143.93	Water (all units)
6/82	$ 68.75	Edger for lawn
6/82	$ 1.75	Plumbing material
6/12/82	$ 750.00	Repair front porch/paint
6/82	$ 289.00	Insurance
8/82	$ 28.77	Paint
9/82	$ 143.93	Water bill
10/82	$ 135.00	Sewer
12/82	$ 168.87	Water
12/82	$ 43.53	Pest removal
12/23/82	$ 289.50	Real estate taxes
3/83	$ 143.93	Water
4/83	$ 36.00	Taxes
4/83	$ 73.72	Roofing materials
6/83	$ 143.93	Water
7/10/83	$ 525.00	Roof repairs
5/83-9/83	$ 120.00	Lawn care
9/25/83	$ 27.00	Water bill
12/28/83	$ 313.14	Real estate taxes

Rents received for 4605 Elmbank $6,480.00

1981
$1,080.00
($1,200.00 Rent due from Lodell Parks)

1982
$1,200.00
($1,200.00 Rent due from Lodell Parks)

1983
to 9/30/83
$900.00
($900.00 Rent due from Lodell Parks)

Income for 4605 Elmbank $2,480.32

Expenses paid by Lodell Parks for 4607-09 Elmbank $ 6,032.21

05/81-9/81	$ 120.00	Lawn care
01/82	$ 180.00	Electrical repairs
05/82-9/82	$ 120.00	Lawn care
05/82	$ 17.50	Glass for storm doors
05/82	$ 43.31	Electrical materials
06/82	$ 13.33	Roofing materials
08/82	$ 46.79	Materials
08/12/82	$ 550.00	Repair/paint porch; roof repairs
09/82	$ 38.72	Materials
10/82	$ 33.00	Electrical supplies
10/82	$ 25.65	Roofing supplies
11/82	$ 15.00	Plumbing supplies
12/30/82	$ 334.41	Real estate taxes
01/82-12/82	$ 2040.00	Mortgage payments ($170 monthly)
03/83	$ 25.17	Glass
03/83	$ 135.00	Sewer
04/83	$ 40.50	Plumbing supplies
07/83	$ 73.93	Electrical work
09/15/83	$ 420.00	Burning paint from, repairing and painting windows
09/25/83	$ 54.00	Water bill
09/25/83	$ 490.00	Painting/repairing windows
01/83-07/83	$ 1190.00	Mortgage payments ($170 monthly)
08/83	$ 25.90	Mortgage pay-off

Rents received for 4607-09 Elmbank		$ 12,180.00
1981	$ 3780.00	
1982	$ 4800.00	
1983 (to Sept.)	$ 3600.00	
Income for 4607-09 Elmbank		$ 6,147.79
Expenses paid by Lodell Parks for 4715-17 Leduc		$16,574.63
01/82	$ 54.00	Sewer
05/82	$ 19.00	Roofing materials
08/82	$ 29.55	Plumbing
03/82-11/83	$ 1975.00	Concrete work
01/82-12/82	$ 1680.00	Mortgage ($140 monthly)
01/83	$ 19.00	Furnace
01/83	$ 28.95	Glass and materials
02/83	$ 26.29	Materials
03/83	$ 65.16	Materials
03/83	$ 100.00	Garage repair
03/83	$ 500.00	Tuckpointing
05/83	$ 21.90	Tuckpointing
05/83	$ 21.67	Materials
05/83	$ 54.00	MSD/Sewer
07/83	$ 100.00	Five windows
07/83	$ 120.85	Paint
07/83	$ 100.00	Tuckpointing
08/83	$ 57.66	Paint
08/83	$ 1000.00	Chimney repairs
08/83	$ 12.50	Paint
08/83	$ 100.85	Plumbing supplies and labor
09/83	$ 175.00	Roof repairs
09/83	$ 300.00	Brick work
09/83	$ 50.00	Waterproofing
09/83	$ 500.00	Tuckpointing
09/83	$ 30.00	Glass

09/83	$ 54.00	MSD/Sewer
12/83	$ 425.00	Taxes
1983	$ 215.00	Insurance
01/83-12/83	$ 1680.00	Mortgage ($140 monthly)
01/84-12/84	$ 1704.00	Mortgage ($142 monthly)
03/24/84	$ 300.00	Plumbing
1984	$ 219.96	Insurance
1984	$ 251.95	Taxes
01/85-07/85	$ 994.00	Mortgage ($142 monthly)
1985	$ 143.60	Water*
1985	$ 108.00	Sewer*
1985	$ 237.43	Electrical work*
1985	$ 212.00	Plumbing repairs*
1985	$ 75.00	Lock replacement*
1985	$ 500.00	Heating plant repair*
1985	$ 288.31	Carpentry work*
1985	$ 1800.00	Roof repair*

* All items, with the exception of those starred, were verified by examining Mr. Parks' records with both attorneys present on April 24th, 1984. Those items starred were given to this Special Master by Mr. Parks' attorney.

Rents received for 4715-17 Leduc		$15,147.50
1981	$ 3200.00	
1982	$ 3822.50	
1983	$ 3675.00	
1984-07/1985	$ 4450.00	
Income from 4715-17 Leduc		($ 1427.13) loss

RECAPITULATION

Income for 2928-30 Belt	($ 371.25) loss
Income for 4605 Elmbank	$ 2480.32
Income for 4607-09 Elmbank	$ 6147.79
Income for 4715-17 Leduc	($ 1427.13) loss

INCOME

$ 6829.73

One-half to ARmentris Parks

$ 3414.87

APPENDIX H

STATE OF MISSOURI)
) ss
CITY OF SAINT LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF SAINT LOUIS
STATE OF MISSOURI

In re the Marriage of:
Lodell Parks,
Petitioner,
and
Armentris Parks,
Respondent.

Cause No. 793-1054
Division 15

FINDING THE FACTS

The above entitled and numbered cause came on for hearing before this Special Master. After hearing the allegations and proofs of the parties before this Special master on November 25th, 1985, and at the specific request of counsel for Respondent, the Special Master now makes the following findings of facts:

1. Mr. Parks testified that the lawn care at the properties in question was provided either by Mr. Parks or a tenant who did so without pay; further, Mr. Parks allocated a dollar amount for these services.

2. Mr. Parks testified that the twelve receipts marked Respondent's Exhibit 6 were signed by the individuals who provided the services referred to in said receipt.

3. Mr. Parks testified that the twelve receipts were signed by different individuals.

4. Mr. Parks testified that the signer of each receipt performed the work referred to in said receipt. Mr. Parks testified that, in some instances, the signer of each receipt did employ a helper or assistant. Mr. Parks testified that, generally, the signer of the receipt purchased the necessary materials, although he was not absolutely certain that this was true in every instance of work done.

5. Mr. Parks testified that the individuals who signed the receipts were "jack legs" — meaning, individuals who performed odd jobs throughout the neighborhood. Mr. Parks testified that he was not personally acquainted with the men who performed the work, that they were not engaged in the business of home or building repairs, that he has no way of contacting the men who provided the services and that he has not seen the men since the services were provided.

6. Of the expenses itemized in the Report of the Special Master of July 31st, 1985, Mr. Parks testified that he did not perform the work himself but hired men to do the work to whom he paid cash.

7. Mr. Parks testified that he supervised work performed at the Belt Avenue property but, that he did not perform the work himself.

8. Regarding 4605 Elmbank Avenue, Mr. Parks testified that, with the exception of lawn care, all work was provided under contract (which included labor and materials) for which he paid cash.

9. Mr. Parks testified that he did not perform the repairs to the front porch (which involved repairing the roof over the porch) or do the painting, although he may have been present when the work was performed. Mr. Parks testified that the work was performed by Lee Smith who signed Voucher #7 of Respondent's Exhibit 6. Mr. Parks testified that he had not seen Mr. Smith since the work was performed nor could he identify Mr. Smith by address or location.

10. Mr. Parks testified that the roof repairs identified in #2, Resp. Exh. 6, was performed by T. Williams who signed said voucher. The contract price of $525 included labor and materials. Mr. Parks testified that he had not seen T. Williams since the work was performed nor could he identify T. Williams by address or location.

11. Mr. Parks testified that, regarding all of the other items representing work performed at 4605 Elmbank Avenue, the work was performed by some other individual for a contract amount which included labor and materials and that the person was paid in cash. Mr. Parks could not identify any of those persons by name, address or other manner except those shown on one of the twelve vouchers otherwise referred to.

12. Mr. Parks testified that, regarding expenses itemized in the Special Master's Report of July 31st, 1985, he paid some individual the amount indicated for the work performed; that the individual was paid in cash and that he could not identify the individual by name or address except in those instances where the individual signed a receipt referred to in Respondent's Exhibit 6. Mr. Parks testified that he did not perform work himself.

13. Regarding 4607-09 Elmbank Avenue, Mr. Parks testified that the roof was repaired and the porch painted by Lloyd Nesbit; that he may have been present when the work was done; that he supervised the work but did not perform any of the work himself; and, that he does not now know the whereabouts of Lloyd Nesbit.

14. Regarding 4607-09 Elmbank Avenue, Mr. Parks testified that lead paint was burned from the windows and that the windows were repaired and painted by George Sanders; that Mr. Parks cannot identify Mr. Sanders further; that the contract price included labor and materials; that, while Mr. Parks might have been present when the work was done, he did not perform any of the work himself.

15. Regarding 4715-17 Leduc Avenue, Mr. Parks testified that all work performed was done by individuals that Mr. Parks cannot now identify; that all work was performed for a previously agreed upon contract price which included labor and materials; that, while Mr. Parks might have been present when the work was done, he did not perform any of the work himself.

16. Regarding 4715-17 Leduc Avenue, Mr. Parks testified that Raymond White repaired and painted the windows; that Mr. Parks does not now know the whereabouts of Mr. White; that the work was performed for a previously agreed upon contract price which included labor and materials; that, while Mr. Parks might have been present when the work was done, he did not perform any of the work himself.

17. Mr. Parks testified that he performed some tuckpointing at the Leduc property but this was only while supervising the work done by the individual to whom he paid the agreed upon contract price. Mr. Parks testified that he paid the individual identified on Voucher #5 in cash and that he cannot now identify the individual by address.

18. Mr. Parks testified and his records indicated that, on March 1st, 1983, $100 was paid for repairs to the garage at the Leduc property which included tuckpointing and brickwork. This work was performed by the same individual who performed the tuckpointing to the apartment building.

19. Mr. Parks testified that $1,000 was paid to Willie Johnson for tuckpointing; that this included repairs to the chimneys; that Mr. Parks did none of the work himself; that he paid Mr. Johnson in cash; that the whereabouts of Mr. Johnson are unknown.

20. Regarding work performed at the Leduc property during 1985, Mr. Parks testified that he did not know the names of the individuals who performed the work; that he did none of the work himself; that repairs to the heating plant were done on the

furnaces on the east side of the building; that the work was performed by an individual referred by the hardware store.

21. Mr. Parks testified that $300 was paid in cash to an individual he cannot now identify to remove and replace bricks at the front of the porch.

22. Mr. Parks testified that, while he may have been present as work was done at the various properties, he was present only for purposes of supervising the work and all work was performed by other individuals.

23. Mr. Parks testified that he used one unit of the Leduc property for storage of materials used in his burglar alarm business; that he did not move into the unit because he did not want to have to move out later should the property be sold to Mrs. Parks.

24. Mr. Parks testified that he had an eighth grade education; that he was a self-made man; that he had no training in bookkeeping; that he had no formal training in carpentry, electrical work or plumbing; that he lived with his sister because he had no place of his own; that he wanted the Leduc property so that he would have a place to live; that Mrs. Parks had cashed a check for $351 made jointly to the parties and that Mr. Parks had not endorsed the check; that his son, Lodell Parks, Jr., had done no work at any time on the properties during the period of accounting covered by the Special Master.

25. Mr. Parks testified that, during his employment at the Veterans Administration, he had purchased Savings Bonds; that he was uncertain of the amount of the bonds; that $4,000 in bonds had been pledged as collateral for a loan made by Lodell Parks, Jr.; and, that Lodell Parks defaulted on the loan.

/s/ Anne-Marie Clarke
Special Master

Submitted this 25th day of April, 1986.

APPENDIX I

STATE OF MISSOURI)
)
CITY OF SAINT LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF SAINT LOUIS
STATE OF MISSOURI

In re the Marriage of:

Lodell Parks,

Petitioner,

and

Armentris Parks,

Respondent.

Cause No. 793-1054

Division 15

SPECIAL MASTER'S REPORT

This matter was assigned to the undersigned who was appointed Special Master by order of the Honorable Jean C. Hamilton on February 2nd, 1984. After several meetings with Atty. Madeline F. Franklin who represented Respondent and with Atty. Margaret Bush Wilson who represented Petitioner, this Special Master submitted her report to counsel and to the Honorable Thomas Mummert on July 31st, 1985. On August 30th, 1985, this Master and counsel for the parties met with Judge Mummert concerning the Special Master's Report. On July 31st, 1985, Atty. Franklin filed extensive objections to the Special Master's Report. Those objections were discussed before Judge Mummert. The Special Master was directed by Judge Mummert to prepare the necessary order for him regarding the items covered in the Report. This Special Master set about to address the objections raised by Atty. Franklin and to prepare the necessary order. On October 9th, 1985, this Special

Master received a telephone call from Atty. John D. Schneider who advised that he was representing Respondent. This Master should point out that, to this date, she has received no communication from Respondent that she had discharged Atty. Forriss Elliott and Atty. Franklin. This Master would also point out that her time expended to October 9th exceeded 29 hours. On October 23rd, 1985, this Special Master received an Entry of Appearance from Atty. Schneider.

Pursuant to a Motion for Hearing made by Atty. Franklin, this Special Master conducted a hearing at which time Respondent was represented by Atty. Schneider. The purpose of the hearing was to receive testimony and evidence from Respondent as set out in Respondent's objections filed by Atty. Franklin.

By letter dated October 31st, 1985, Attys. Franklin, Schneider and Wilson were advised that Respondent's counsel should furnish this Special Master with suggestions to be used in preparing this report. Atty. Schneider provided a Proposed Accounting as well as numerous Exhibits. These exhibits included statements from tenants as well as a report from a handwriting expert. This Master has thoroughly reviewed these Exhibits.

Before proceeding with the Report, this writer must state her frustration in bringing this matter to a conclusion. As stated earlier, this Master was appointed over two years ago. Because of the complexity of the matter, it was realized that this matter would not be resolved quickly. Working with Attys. Franklin and Wilson did simplify the situation somewhat as the attorneys had represented the parties for the duration of the litigation. (Petitioner was represented by other counsel at the trial; Atty. Wilson has represented him since shortly after the trial was concluded.) This Master was selected by the Attorneys. Both attorneys are extremely capable and both have a reputation for being women of honor.

As a result of the many hours spent with the attorneys on this matter, negotiations were entered into in an effort to resolve this

matter. Those negotiations included the issue of temporary maintenance due Respondent and the sale of 4715-17 Leduc Avenue. Those negotiations were entered into in good-faith by this Master and, it is assumed, by the Attorneys.

After spending over eighteen months on this matter and after the Special Master's Report was submitted and after Atty. Franklin had filed her objections to the Report and after efforts had begun to address those objections, Atty. Schneider began his representation of Respondent. While this Master in no way intends to deny Respondent her right to choose legal representative, this Master must state that Atty. Schneider's involvement at the "eleventh hour" has seriously affected the months of work done before he entered his appearance.

The Report filed July 31st, 1985, reflected the good-faith negotiations between the Master and Attys. Franklin and Wilson. As Atty. Schneider was not a party to those negotiations, he now wishes to ignore them. In any litigation, negotiation is an essential part. Every attorney has been involved in efforts to resolve litigation which force the attorney to make concessions. The sole purpose of these concessions is to bring the litigation to an end. Settlement is an important part of our legal system. Settlement was a very important part of trying to resolve this matter while Attys. Franklin and Wilson represented the parties. Atty. Schneider has been unwilling to consider any negotiation and will not acknowledge the negotiations entered into prior to his entry. This is indeed frustrating to this Master.

This Master was appointed to resolve specific issues, namely, temporary maintenance due Respondent; sale of two parcels of real estate owned by the parties at the time of dissolution; and, an accounting of rents received and expenses made by Petitioner for the real estate owned by the parties. Other issues have been presented which this Master maintains are beyond the scope of the Master's appointment. (These include sterling silver flatware

and linens and towels which were awarded Respondent but were removed from the home when she returned.)

2928-30 Belt Avenue

As reported in the Special Master's Report of July 31st, 1985, 2928-30 Belt was sold on September 20th, 1984. The proceeds, $4,345.98, are on deposit with this Court.

4715-17 Leduc

The Leduc property has been a source of keen interest by both parties. During both portions of these proceedings, both parties have wanted to purchase this property.

The property is a four-family building on a nicely maintained street in North St. Louis. At the request of this Master, the property was appraised for $27,000 as of January 2nd, 1986. (The property had been appraised for $23,000 in 1983.) There is an outstanding balance on the mortgage of $2,758.44 as of April 21st, 1986.

As this Master set forth above, negotiations were held with the attorneys for the parties regarding this property. It was agreed that the property would be advertised for sale. Petitioner would be given the opportunity to purchase the property by offering more than the highest offer received. Several contracts were received by this Special Master; these contracts were between $22,000 and $23,000. A contract was submitted for $41,000. This Master rejected this contract as neither the buyer or the agent representing the buyer met with this Master in accordance with the instructions for bidding. Respondent offered $30,000. After conferring with the attorneys for the parties regarding the contracts received, this Master determined that the price to Petitioner was $23,000 which was the appraised value.

Atty. Schneider stated in conference before this Court that he had obtained an appraisal of the property for $32,000. At no time was Atty. Schneider requested to obtain an appraisal nor

has this Master been provided with a copy of an appraisal. (Attorneys Wilson and Schneider were provided with copies of the January, 1986 appraisal.)

By letter dated February 21st, 1986, this Master advised Attys. Wilson and Schneider that a check for the offered price was to be submitted to the Master not later than March 3rd, 1986. This decision of the Master was the subject of several efforts by Atty. Schneider to get an order from, first the Presiding Judge of this Circuit and then, from this Honorable Court halting the proceedings. In neither effort was Atty. Schneider successful. On March 3rd, this Master received a check from Atty. Wilson on behalf of Petitioner for $24,000 for the purchase of the Leduc property.

On April 1st, 1986, this Court entered an Order regarding the sale of the Leduc property. This Master and the attorneys had met with this Court on March 21st, 1986 regarding this matter in general and the sale of the property specifically. At the March meeting, this Court modified this Master's earlier instructions by permitting the parties to submit a check for one-half of the offered purchase price. Having submitted a check on behalf of Petitioner on March 3rd, Atty. Wilson declined to submit another check under the modified order. This Court's April Order directed Respondent to submit her bid directly to the Court not later than April 4th. On April 1st, 1986, this Master received an offer to purchase the Leduc property from Atty. Schneider on behalf of Respondent for $32,000. This offer was accompanied by a check dated April 18th, 1986 in the amount of $16,000.

Pursuant to this Court's order of April 1st, this Master deposited the check submitted by Atty. Wilson into the Registry of the Circuit Clerk. The Check submitted by Atty. Schneider was presented this Court.

It is the recommendation of this Special Master that 4715-17 Leduc be sold to Petitioner for $24,000. As the dissolution

decree ordered that any indebtedness be paid from the proceeds of the sale, the price to Petitioner is $21,241.56.

It is further recommended that this Court order Respondent to execute the deed transferring title to Petitioner.

TEMPORARY MAINTENANCE

petitioner was ordered to pay to Respondent as temporary maintenance $750 per month beginning in July 1979. This order remained in effect until the decree of dissolution was granted on December 31st, 1980. Petitioner did not make these payments. In September 1980, the Honorable Anna C. Forder ordered Certificates of Deposits totalling $11,445 released to Respondent. Respondent was, however, already entitled to one-half of these monies. The receipt of the monies, therefore, reduced Petitioner's indebtedness by $5,722.50. The release of the CDs to Respondent reduced the amount owed to $7,027.50.

As stated above, this Master met with Attys. Wilson and Franklin on several occasions in an effort to resolve the issues before the Master. Two points were discussed during these meetings and negotiations. It was agreed that Petitioner would be allowed a credit for expenses he paid on behalf of Respondent during the period before the dissolution was granted. These expenses totalled $1,846.91 and were paid between December 1978 and July 1980. This issue was discussed several times with the attorneys in an effort to identify those expenses that would be allowed. This master engaged in those negotiations in good-faith, believing that the negotiations would be honored. The second point involved interest due on the temporary maintenance. Again, this Master met with the attorneys in an effort to negotiate and resolve the dispute issues. It was settled that interest would not be calculated on the temporary maintenance.

Atty. Schneider has filed a Maintenance Payment History and Statement of Interest Due per the statute. The statement in-

dicates that Petitioner's liability is $7,027.50 (principal) and interest of $4,401.92 through October 1985. Interest continues to accrue at the rate of $70.27 per month. Atty. Schneider further seeks to disallow the credits mentioned earlier. He cites paragraph 8(e) of the decree which provided that Petitioner was to pay all marital debts incurred prior to September 8, 1978 and that each party would pay their own debts incurred after that date.

The items which are the subject of this credit were paid after September 1978. It is not determined when the debts were incurred. As this matter was the subject of negotiations between attorneys for the parties, the attorneys could agree to waive interest and to allow Petitioner credit for expenses paid. Agreements such as these are made routinely in the practice of law. Negotiations and settlements are essential keys to any litigation.

Atty. Schneider states in his proposed accounting that there is no authority for allowing Petitioner a credit. Negotiation and settlement do not rely on authority but rather, the ability to resolve litigations.

Atty. Schneider also states that, if a credit is allowed Petitioner, Respondent should also be allowed a credit for amounts she paid during this period. This issue was not presented to the Master and it is not clear that this is relevant. Atty. Schneider also states that debts were incurred for purchases for the parties' children. While the matter was never raised, it was the understanding of this Master that the parties' children are adults. Lodell Parks, Jr. appeared before this Master and stated under oath that he has been employed by the City of St. Louis for more than twenty years. It is the understanding of the Master that the parties' other child is an adult who lives with Respondent.

Atty. Schneider states that Atty. Wilson "managed to sell this concept on the basis of the" allegation that credit would be

allowed Petitioner in consideration of Petitioner paying Respondent's attorney's fees. Atty. Schneider argues that any such agreement would be "ludicrous on its face." While not wishing to engage in a lengthy commentary on the matter, this Master would say that such agreements are made routinely. According to Petitioner's Affidavit dated November 25th, 1985, it was concluded that the balance then due on temporary maintenance was set off by payments made by Petitioner for various expenses, bills and charges of Respondent. This Master was not "sold" anything. This Master worked with Attys. Wilson and Franklin in an effort to resolve this matter.

This Master recommends to this Court that Petitioner's liability to Respondent for Temporary Maintenance is $5,180.59 ($7,027.50 less expenses credited to Petitioner of $1,846.91).

ACCOUNTING OF RENTS

The greatest area of concern is with providing an accounting of rents received. To provide some background to the problem, it is necessary to point out the status of the parties at the time the dissolution was granted.

Petitioner remained in the marital home during the pendency of the dissolution. It is the understanding of the Master that both parties resided in the marital home, 4605 Elmbank, until May 1979. Although the marital home was awarded to Respondent by the decree of dissolution on December 31, 1980, Petitioner remained in the marital home until September 1983. During that period, Petitioner received rents from the real estate owned by the parties. In the case of the LeDuc property, Petitioner continues to receive the rental income.

Petitioner has maintained all records of the income and expenses of the properties owned by the parties. These records are kept in a ledger maintained by petitioner.

These records are very interesting to examine. Although petitioner stated before this Master that he is not a learned man and

that he does not have any training in keeping financial records, an examination of his ledger book reveals a man who maintains very meticulous records. As pointed out by Atty. Schneider in his Proposed Accounting and, as testified to by Respondent and, as became obvious to this Master, Petitioner recorded nearly every cent he spent in "the book." Money spent for lunch is recorded (in some instances) as well as some grocery items. Petitioner is clearly a man who pays attention to details. The bone of contention is with Petitioner's book; namely, those items recorded in the book as well as the items not recorded.

During meetings with Attys. Wilson and Franklin, this Master spent many hours pouring over Petitioner's book and examining his records. During one of these meetings, several receipts for work done at the Elmbank and the LeDuc property were examined. Atty. Franklin photocopied twelve of those receipts. (Atty. Schneider has attempted to make an issue of the fact that the Master did not retain the receipts; as has been stated earlier, it was not felt necessary that the Master retain the receipts since they were examined in the presence of the attorneys). It was only shortly before Atty. Franklin submitted her Objections that it was learned that there was a dispute about the receipts and expenditures for the properties.

This Master must also answer the charge of Atty. Schneider and Respondent that the Master refused to meet with Respondent. Atty. Franklin advised this Master that Respondent would like to meet with the Master about this matter. This Master advised Atty. Franklin that she felt such a meeting would not be beneficial as it was the understanding of the Master that Respondent did not have any personal knowledge of the expenses associated with the properties since the properties were managed and controlled by Petitioner. This Master explained to Atty. Franklin that she would receive evidence from Respondent which would refute any of the evidence offered by Petitioner. This Master made it clear that a meeting would not be considered unless evidence could be submitted to substantiate

any areas of disagreement. Atty. Franklin advised that they wished to engage a handwriting expert to examine the receipts as Respondent believed that the signatures were forgeries. Atty. Franklin explained that the expert was unable to render a conclusive opinion based on the samples submitted.

A major dispute involves work done at the various properties. Petitioner is obviously capable of making repairs to the properties. Respondent testified to this as well as to the fact that, during the marriage, she and her son assisted Petitioner in making repairs. Affidavits were submitted on behalf of both parties which attest to the fact that Petitioner made repairs to the properties. Yet, despite these affidavits, Petitioner has stated that he did no work at the properties. These statements made by Petitioner were clearly false. This Master is unable to explain why Petitioner would not be honest about how the work was done. Respondent has testified that Petitioner maintained his records to show payments to third persons for tax purposes. Respondent further testified that Petitioner would record a dollar amount in his book for his labor supplied when making the repairs.

While this Master is certainly concerned that one would testifiy falsely, this Master must also make note of the fact that repairs were done. Respondent has testified to this (even though she provided evidence that in some cases the work was not done completely) and tenants have testified to this in the affidavits supplied by both parties. The issue to be determined then is whether or not Petitioner is entitled to a value for his services. This Master answers "yes."

Atty. Schneider presented the findings of a handwriting expert who concluded generally that the twelve receipts mentioned earlier were either wholly written by Petitioner or were written by Petitioner and signed by some unknown person. Petitioner testified that he did not write the receipts but gave the receipt blank to the individual who allegedly wrote and signed it. The

findings of the expert refute this. One cannot, however, ignore the fact that materials were purchased which were used in making the repairs claimed to have done by the signers of the receipts. Petitioner's book shows purchases of tuckpointing supplies, materials and tools; purchases of paint and purchases of electrical supplies.

Atty. Schneider would limit Petitioner only to those materials purchased and recorded in the book. This Master does not feel that Petitioner needs to be punished that harshly. Respondent's property were maintained by Petitioner's efforts. She has received a definite benefit because of Petitioner's efforts in maintaining the Elmbank property which was awarded to Respondent under the decree. Petitioner is entitled to some credit for his efforts.

Another area of dispute involves the rents received. Respondent stated in her affidavit that Petitioner was renting the garage at the LeDuc property. Petitioner did not reveal this to the Master. There are two garages. One garage has been rented to a neighbor, Mrs. Morrison, for several years. According to Petitioner, Mrs. Morrison rented the garage from 1980 until the summer of 1983 for $5.00 per month. From the summer of 1983 until the spring of 1984, Petitioner used the garage. Mrs. Morrison has been renting the garage since June 1984 for $10.00 per month. The other garage is used by a tenant, Mr. Nolan. According to Petitioner, Mr. Nolan does not pay rent for the garage. The garage is protected by an alarm system installed and maintained by Petitioner. Mr. Nolan pays $10 per month for the alarm service.

The Special Master recommends that this Court find Petitioner's liability for rents to be $17,935.92. A detailed accounting follows.

This Master would also recommend that an order be entered releasing the bond petitioner posted on appeal. The bond is secured by real estate owned by Petitioner's sister.

Respectfully submitted,

/s/ Anne Marie Clarke
Special Master

Dated: April 25th, 1986

Expenses paid by Petitioner at 4605 Elmbank			$ 1,905.95
3/82	$ 143.93	Water (all units)	
4/82	$ 125.00	Plumbing repairs	
5/82	$ 45.00	Lawn mower	
6/82	$ 143.93	Water (all units)	
6/82	$ 1.98	Weatherstripping	
6/82	$ 68.75	Edger for lawn	
6/82	$ 1.75	Plumbing material	
6/82	$ 200.00	Repaired and painted front porch (Petitioner did work)	
8/82	$ 28.77	Paint	
9/82	$ 143.93	Water bill	
10/82	$ 135.00	Sewer	
12/82	$ 168.87	Water	
12/82	$ 43.53	Rat poison	
3/83	$ 143.93	Water bill	
4/83	$ 40.60	Plumbing supplies	
4/83	$ 73.72	Roofing material	
5/83	$ 26.33	Light fixture	
6/83	$ 143.93	Water bill	
7/83	$ 200.00	Roof repairs (Petitioner did work)	
9/83	$ 27.00	Water bill	
Rents received for 4605 Elmbank			$ 6,480.00
1981	$1080.00		
	($1200.00	Rent due from Petitioner)	
1982	$1200.00		
	($1200.00	Rent due from Petitioner)	
1983	$ 900.00		
to 9/30/83	($ 900.00	Rent due from Petitioner)	
Income for 4605 Elmbank			$ 4,574.05

Expenses paid by petitioner for 4607-09 Elmbank $ 4,741.85

1/82	$ 180.00	Electrical repairs
5/82	$ 17.50	Glass for storm doors
5/82	$ 43.51	Electrical materials
6/82	$ 13.33	Roofing materials
6/82	$ 2.81	Glass for back door
8/82	$ 46.86	Materials
8/82	$ 200.00	Repaired and painted porch; roof repairs (Petitioner did work)
9/82	$ 38.72	Materials
9/82	$ 130.00	Paint
9/82	$ 15.54	Materials
10/82	$ 33.00	Electrical supplies
10/82	$ 25.65	Roofing supplies
11/82	$ 15.00	Plumbing supplies
1982	$2040.00	Mortgage ($170/month)
3/83	$ 25.17	Glass for storm door
3/83	$ 135.00	Sewer
4/83	$ 40.60	Plumbing supplies
4/83	$ 1.58	Material
4/83	$ 2.29	Hardware material
4/83	$ 18.91	Material
4/83	$ 2.00	Gas for lawn mower
7/83	$ 73.93	Electrical work
8/83	$ 20.55	Glass
9/83	$ 200.00	Burning paint from, repairing and painting windows (Petitioner did work)
9/83	$ 54.00	Water bill
9/83	$ 150.00	Painting/repairing windows (Petitioner did work)
1983	$1190.00	Mortgage ($170/month)
8/83	$ 25.90	Mortgage pay-off

Rents received for 4607-09 Elmbank $ 13,626.71

1981	$3780.00
1982	$4800.00
to 9/83	$3600.00

Additions to rent

$ 740.00	Rent deposits
$ 706.71	Refund of mortgage escrow

Income for 4607-09 Elmbank $8,884.86

Expenses paid by Petitioner for 2928-30 Belt $ 2072.07

06/82	$ 54.00	Sewer
06/82	$ 60.00	Paint
06/82	$ 49.00	Gas for burning paint
06/82	$ 300.00	Burning and painting windows*
07/82	$ 50.00	Sewer cable
07/82	$ 20.00	Brick cleaner
09/82	$ 100.00	Material
11/82	$ 190.00	FAIR Plan insurance
12/82	$ 54.00	Sewer
12/82	$ 37.82	Roofing supplies and labor
		Real estate taxes (includes 4605 Elmbank)
09/83	$ 45.00	Water bill (paid jointly)
09/83	$ 43.53	Rat poison
10/83	$ 125.00	Cut weeds
10/83	$ 150.00	Cement
10/83	$ 20.00	Carpentry
02/84	$ 62.10	Sewer bill
03/84	$ 36.62	Water bill

Rents received for 2928-30 Belt		$ 2,425.00
1981	$1050.00	
1982	$ 900.00	
1983	$ 475.00	
Proceeds from sale of 2928-30 Belt		$ 4,345.98
less one-half of escrow refund due Petitioner		(170.50)
NET TO RESPONDENT		$ 2,264.20

Expenses paid by Petitioner for 4715-17 Leduc $ 14,254.38

01/82	$ 54.00	Sewer
05/82	$ 19.00	Roofing materials
08/82	$ 29.55	Plumbing
3/82-11/83	$1750.00	Concrete work
10/82	$ 7.22	Materials
10/82	$ 25.65	Roofing materials
1982	$1680.00	Mortgage ($140 monthly)
01/83	$ 19.00	Furnace
01/83	$ 3.69	Tuckpointing tool
01/83	$ 28.95	Glass and materials
02/83	$ 26.29	Materials
03/83	$ 65.16	materials
03/83	$ 50.00	Garage repair*
03/83	$ 200.00	Tuckpointing*
05/83	$ 21.90	Tuckpointing
05/83	$ 21.67	Materials
05/83	$ 54.00	MSD/Sewer
06/83	$ 100.00	Cement
07/83	$ 100.00	Five windows
07/83	$ 120.85	Paint
08/83	$ 50.00	Tuckpointing*
08/83	$ 57.66	Paint
08/83	$ 250.00	Chimney repairs*
08/83	$ 12.50	Paint
08/83	$ 100.85	Plumbing supplies and labor
09/83	$ 100.00	Roof repairs*
09/83	$ 100.00	Carpentry work*
09/83	$ 300.00	Brick work
09/83	$ 50.00	Waterproofing
09/83	$ 200.00	Tuckpointing*
09/83	$ 30.00	Glass
09/83	$ 54.00	MSD/Sewer
1983	$1680.00	Mortgage ($140 monthly)

1984	$1704.00	Mortgage ($142 monthly)
03/84	$ 100.00	Plumbing
06/84	$ 150.00	Air conditioner repair
07/84	$ 95.00	Repaired kitchen light and leak
09/84	$ 62.00	Key and lock replacement
10/84	$ 55.00	Repair waterline*
12/84	$ 30.00	Light fixture
12/84	$ 87.43	Electrical work
1985	$1704.00	Mortgage ($142 monthly)
1985	$ 143.60	Water
1985	$ 128.88	Sewer
1985	$ 237.43	Electrical work
1985	$ 212.00	Plumbing repairs*
1985	$ 135.00	Heating plant repair*
1985	$ 288.31	Carpentry work
1985	$ 900.00	Roof repair
03/85	$ 111.05	Replace door
1986	$ 576.00	Mortgage (thru April; $144/month)
1986	$ 20.00	Chimney materials
1986	$ 95.00	Waterproofing supplies
1986	$ 30.00	Additional escrow payment
1986	$ 74.88	Sewer
1986	$ 53.21	Water

* These repairs were done by Petitioner; the Master has given a value to the work done.

Rent received for 4715-17 Leduc $ 18,047.50

1981	$3200.00
1982	$3822.50
1983	$3675.00
1984	$3150.00
1985	$3150.00
to 4/1986	$1050.00

Additions to income		
Garage rental	June 1984-present $10/month	$ 230.00
Deposits		$ 402.50
$ 160.00	Nolan	
$ 82.50	Miller	
$ 160.00	Johnson	
Income from 4715-17 LeDuc		$ 4,425.62

RECAPITULATION

Income for 2928-30 Belt (One-half to Respondent	$ 2,264.20
Income for 4605 Elmbank	$ 4,574.05
Income for 4607-09 Elmbank	$ 8,884.86
Income for 4715-17 Leduc (One-half to Respondent)	$ 2,212.81
Due Respondent of Petitioner from Real Estate	$ 17,935.92
Due Respondent of Petitioner/Sale of Leduc	$ 10,620.78
Due Respondent of Petitioner/Maintenance	$ 5,180.59
Total due Respondent	$ 33,737.29

APPENDIX J

Missouri Revised Statutes (1978 as amended)

515.020. When referred by order of court

Where the parties do not so consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

(1) Where the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or

(2) Where the taking of an account shall be necessary for the information of the court, before judgment, or for carrying a judgment or order into effect; or

(3) Where a question of fact other than upon the pleadings shall arise upon motion or otherwise, in any stage of the action. (R.S.1939, § 1142)

Former Revisions. 1929, § 976; 1919, § 1426; 1909, § 1996; 1899, § 698; 1889, § 2138.

APPENDIX K

Rules Missouri Supreme Court

Rule 67.06. Final Dismissal on Failure to Amend

On sustaining a motion to dismiss a claim, counterclaim or cross-claim the court shall freely grant leave to amend and shall specify the time within which the amnedment shall be made or amended pleading filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect; in which cases amendment shall be made promptly by the party in default.
(Amended Jan. 19, 1973, effective Sept. 1, 1973.)

Committee Note—1974

This is the same as prior Rule 67.05.
Compare: Rule 41(b) of the Federal Rules of Civil Procedure.

Rule 67.07. Court May Make Order For Payment of Unpaid Costs, When

If a plaintiff who has once dismissed a civil action in any court commences a civil action based upon or including the same claim against the same defendant, the court may make an order for the payment of any unpaid costs of the civil action previously dismissed and may stay the proceedings in the civil action until the plaintiff has complied with the order.
(Amended Jan 19, 1973, effective Sept. 1, 1973.)

Committee Note—1974

This is the same as prior Rule 67.07.
Compare: Rule 41(d) of the Federal Rules of Civil Procedure.

Rule 68. Masters and Receivers

Former Rule 68, Referees and Receivers, consisting of 68.01 to 68.26, was repealed and a new Rule 68, entitled Masters and Receivers, consisting of 68.01 to 68.03, was adopted by order of the Missouri Supreme Court dated February 1, 1972, effective September 1, 1972.

Rule 68.01. Masters in Circuit Courts

(a) Appointment and Compensation. Each circuit court in which any action is pending may appoint a master therein. The compensation to be allowed a master shall be charged upon such of the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the court, as the court may direct.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Qualifications of Master. No person shall be appointed a master who is of kin to either party or is interested in the outcome of the action.

(d) Oath of Master. Before proceeding to hear any testimony in the action, a master shall take and subscribe an oath, before some officer duly authorized to administer an oath, faithfully to hear and examine the matters at issue and to make a just impartial and true report.

(e) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference. He may rule upon the admissibility

of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 73.01(a) for a court sitting without a jury.

(f) Proceedings. (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties, or their attorneys, to be held within 20 days after the date of the order of reference and shall notify the parties, or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Any party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed or, in his discretion, adjourn the proceedings to a future day, giving notice thereof to the absent party.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas issued by the clerk of the appointing court. The failure of any person to comply with the requirements of any subpoena issued as herein provided shall be reported promptly to the court issuing the subpoena. Witnesses shall receive the same fees as would be allowed them as witnesses in a civil case in circuit court. Sheriff and all other officers shall be entitled to the same fees for services performed in references to a master, as would be allowed them in their respective courts for similar services. All costs incurred in a reference shall be taxed in the pending case in circuit court.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which

the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(4) Depositions. Depositions of witnesses or parties taken in the action may be read in evidence before the master as in cases of trials before the court.

(g) Reports.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and if required to make findings of fact and conclusions of law shall set them forth in the report. He shall file the report with the clerk of the court together with a transcript of the proceedings including the evidence and exhibits, if any. The clerk shall forthwith mail to all parties notice of the filing and a copy of the master's report.

(2) Objections. Any party within 15 days after being served with notice of the filing of the master's report may file written objections thereto and serve them upon the other parties.

(3) Actions on Report and Use in Jury Trials. If no objections are filed, the court may adopt the report. If objections are filed, or the court proposes action other than adoption of the report, the court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. If issues are to be tried by a jury, the master's findings on the issues submitted to him may be reported to the jury as having been determined and only fact issues other than those determined by the master shall be submitted to or determined by the jury.

(4) Stipulation as to Findings. If the parties stipulate that a master's findings of fact shall be final and binding upon them, only questions of law arising upon the master's report shall thereafter be considered.

(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.
(Adopted Feb. 1, 1972, effective Sept. 1, 1972.)

APPENDIX L

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

In Re The Marriage Of:
Lodell Parks,
Petitioner,
and
Armentris Parks,
Respondent.

Cause No. 793-1054
Division No. 15

ORDER

On consideration of Respondent's Motion for Stay of Proceedings concerning the sale of real estate, being orally advised that the Special Master and Petitioner oppose said motion, it is

ORDERED that the Motion for Stay is denied; and it is

FURTHER ORDERED that the Special Master shall, not later that 5 p.m. April 4, 1986, deposit the proceeds of any checks which were submitted to her on or before April 1, 1986, into the Registry of this Court, said funds to be deposited in interest bearing accounts; and it is

FURTHER ORDERED that the Special Master shall file her final report on the reference not later than 5:00 p.m., April 21, 1986; as part of said final report, the Special Master shall submit deeds to accomplish the conveyance of the real estate located at 4515-17 Leduc to the person submitting the highest

bid in accordance with the Special Master's letter of February 21, 1986, as modified by order of this Court entered March 21, 1986; and it is

FURTHER ORDERED that Respondent submit in writing, under seal, to the Court not later than 5:00 p.m., April 4, 1986, her bid for the property located at 4515-17 Leduc.

SO ORDERED:

/s/ Robert H. Dierker, Jr., Judge

DATED: April 1, 1986

APPENDIX M

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

Lodell Parks

v.

Armentris Parks

No. 793-1054

Div. 20

2-27-86

MEMORANDUM FOR CLERK

Comes now the Court on its own Motion and disqualifies itself in the above matter.

SO ORDERED:
Thomas C. Mummert, III
Judge, Div. 20
St. Louis Circuit Court

cc: John Schneider
Margaret Bush Wilson
Anne-Marie Clarke

Received: February 28, 1986
WILSON, SMITH & SEYMOUR

APPENDIX N

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

Parks

v.

Parks

No.

Div. 15

March 21, 1986

MEMORANDUM FOR CLERK

Parties appear by counsel, Special Master appear to modify powers of Special Master. Oral order entered granting Respondent Armentris Parks until April 1, 1986 to comply with letter of Special Master dated February 21, 1986, as modified during chambers conference regarding sale of Leduc property.

SO ORDERED:
/s/ Robert H. Dierker, Jr., Judge

FILED: March 21, 1986
Freeman R. Bosley, Jr.
Clerk, Circuit Court

APPENDIX O

21 February 1986

John D. Schneider, Esq.
705 Olive Street, Suite 1415
St. Louis, Missouri 63101

Margaret Bush Wilson, Esq.
4054 Lindell Blvd.
St. Louis, Missouri 63108

Dear Mrs. Wilson and Mr. Schneider:

I have enclosed a copy of the appraisal of 4715-17 LeDuc. Please note that the market value is $27,000.

I would like to conclude this matter. I am, therefore, asking you to consult with your client regarding an offer for the property. If your client wishes to purchase the property, I must have that offer submitted to me not later than March 3rd. A check for the offered price must be submitted by March 3rd. The check for the offer that is accepted will be paid into the Court for distribution.

My decision is not subject to change. Failing to comply with these instructions will result in non-consideration of your client's offer.

Most sincerely,

/s/ Anne-Marie Clarke

AMC:tth
Enclosure

APPENDIX P

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

Lodell Parks

v.

Armentris Parks

No. 793-1054

Div. 15

April 3, 1986

MEMORANDUM FOR CLERK

Pursuant to the Order of this Honorable Court dated April 1st, 1986, Special Master deposits a check for $24,000 representing Petitioner's offer to purchase 4715-17 Leduc in the Registry of the Circuit Court, to be held in interest bearing account.

/s/ Anne-Marie Clarke
Special Master

SO ORDERED:
/s/ Robert H. Dierker, Jr., Judge

APPENDIX Q

CONSTITUTION OF THE UNITED STATES

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *